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No. _____

In the Supreme Court of the United States

October Term, 1985

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY LTD.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIONAL MARINE UNDERWRITERS LTD. and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

PETITION FOR WRIT OF CERTIORARI

MORGAN, WENZEL & McNICHOLAS
W. MARSHALL MORGAN
WALTER M. YOKA
GRETCHEN M. NELSON
1545 Wilshire Boulevard
Suite 800
Los Angeles, California 90017
Telephone: (213) 482-1961

GREINES, MARTIN, STEIN & RICHLAND
ALAN G. MARTIN
9601 Wilshire Boulevard
Suite 508
Beverly Hills, California 90210
Telephone: (213) 859-7811

Attorneys for Petitioners
JOHN HOLMAN AND SONS LTD.
AND HORACE, HOLMAN & COMPANY LTD.

Westside Law Publishers Los Angeles, California (213) 477-0491

QUESTIONS PRESENTED FOR REVIEW

This petition presents the following questions requiring plenary consideration by this Court:

1. Whether, consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the State of California may assert personal jurisdiction over a foreign insurance broker, which had no contact with California, solely because the broker procured insurance in the United Kingdom which afforded coverage to a fishing fleet including vessels with foreseeable California contacts?

2. Whether, consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the State of California may also assert personal jurisdiction over a second foreign insurance broker based solely upon its subsequent purchase of a portion of the assets of the first broker?

3. Whether, consistent with the requirements of Due Process and Equal Protection of the law under the Fourteenth Amendment of the United States Constitution, the State of California may afford merely discretionary review of the due process issues involved in its assertion of personal jurisdiction over foreign corporations and then treat such parties' defense on the merits as a waiver of their federal constitutional claims?

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PETITION FOR WRIT OF CERTIORARI

Petitioners John Holman & Sons Ltd., a corporate citizen of the United Kingdom, and Horace, Holman & Company Ltd., a corporate citizen of the United Kingdom,[1] and each of them pray that a Writ of Certiorari will issue to review the order and opinion

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[1]The parties to the proceedings are shown in the caption hereto.

John Holman Holdings Ltd. is the holding company for John Holman & Sons Ltd., which has the following subsidiaries: John Holman Financial Services Ltd., Holman General Facilities Ltd., Holman Motor Facilities Ltd., Holman Special Risks Ltd., British Marine Underwriting Agents Ltd., Martin Lane Ltd., Holman Professional Indemnity Ltd., and John Holman & Sons Inc.

H. Clarkson PLC is the holding company for Horace, Holman & Company Ltd., which has the following subsidiaries: Horace, Holman Marine & Overseas Ltd., Horace, Holman U.K. Ltd., Holman Wade Ltd., and Horace, Holman Reinsurance Services Ltd.

of the Superior Court of the State of California, County of San Diego, denying Petitioners' motions to quash service of summons for lack of personal jurisdiction.

OPINIONS BELOW

The orders and written decision of the Superior Court denying Petitioners' motion to quash service of summons are reproduced in the Appendix hereto at pages A1 to A12.

By order of August 16, 1985, the California Court of Appeal for the Fourth Appellate District, Division One summarily denied petition for writ of mandate without opinion. (App. A12.) The California Supreme Court denied review without opinion by order of September 25, 1985. (App. A13.)

JURSIDICTION

The judgment submitted for review is an order denying Petitioners' motions to quash service of summons for lack of personal jurisdiction under the Due Process Clause of the Fourteenth Amendment.

Under California law the Superior Court's denial of Petitioners' motions to quash is subject only to discretionary review by petition for writ of mandate. California Code of Civil Procedure section 418.10. California law thus puts Petitioners to the choice of defaulting or of defending on the merits but thereby losing the right to contest jurisdiction on appeal. *McCorkle v. City of Los Angeles,* 70 Cal.2d 252, 257-258 (1969); *Danzig v. Jack Grynberg & Associates,* 161 Cal.App.3d 1128, 1140-1141 (1984). The validity of this procedure under the Due Process and Equal Protection Clauses of the Fourteenth Amendment was raised in the petition for review filed with the California Supreme Court.

This Court's jurisdiction lies under 28 U.S.C. section 1257, subdivision (3). See *Calder v. Jones*, ___ U.S. ___, 104 S.Ct. 1482, 1486, n. 8 (1984); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1969); see also *General Council on Finance and Administration v. Superior Court*, 439 U.S. 1355, 1371-1372 (1978) (Rehnquist, J., in chambers).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The Fourteenth Amendment of the United States Constitution states in relevant part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Code of Civil Procedure section 410.10 provides: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

STATEMENT OF THE CASE[2]

Synopsis: An English insurance broker, which does not do business in California, acting at the request of a Canadian corporation, succeeded in placing certain layers of insurance overseas, to cover a Missouri corporation's tuna fishing fleet. A personal injury action was brought by a seaman on one of these vessels having a California owner and home port; this action ultimately led to a dispute over insurance coverage in which jurisdiction was asserted under California's long-arm statute over the insurance broker and a second brokerage company which had subsequently purchased some of the first broker's assets. The two brokerage companies

[2]Because of the manner in which the case arises, the relevant facts are established without substantial controversy by the pleadings and declarations filed in connection with motions to quash.

moved to quash service on federal due process grounds. Their motions were denied and the California appellate courts summarily denied review.

1. The Insurance Policy.

Ralston Purina Company, a Missouri corporation, regularly seeks liability insurance coverage for a fleet of marine vessels, namely tuna boats. Lawton-Bryne-Bruner Insurance Agency Company ("LBB"), also a Missouri corporation, was responsible for obtaining this coverage for the policy to become effective December 1, 1980. It succeeded in placing only 30% of the first $500,000 layer of risk. LBB then requested Canadian International Marine Underwriters Limited ("CIMU"), a Canadian corporation headquartered in Toronto, to see if it could place the remaining 70% of the $500,000 primary insurance and also layers of excess insurance to $5,000,000. CIMU succeeded in placing 70% of the first $100,000 with an Italian insurer and 70% of the next primary layer ($200,000 excess of $100,000) with another carrier. CIMU then reportedly told LBB it would be necessary to go to the London market to attempt to place further coverage.

CIMU then engaged John Holman & Sons, Ltd. (hereinafter sometimes "John Holman" or "John Holman & Sons"), a London brokerage firm, which succeeded in placing 70% of the third layer of primary coverage ($200,000 excess of $300,000) with Bedford Insurance Company Limited, a Hong Kong corporation, the first layer of excess ($500,000 excess of $500,000) with Reinsurances Limited, a Cayman Islands corporation,[3] and additional excess coverage with Lloyds and London companies.

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[3]John Holman's exclusive contact with California at any stage of the transaction involved communicating with Duncanson & Holt, the reinsurer of Reinsurances Limited. John Holman wanted to

The insurance policy was issued to Ralston Purina and covered 36 specified tuna boats. The policy issued by the London market insurers contained a "New York suable clause" stating in pertinent part:

> "The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless, as between the assured and the assurers the place of suit hereon shall be deemed the State of New York, United States of America, and any suit hereon may be brought against the Underwriters in any Court of competent jurisdiction within the United States."

2. The Accident And Settlement.

In March, 1981, Donald J. Correia, a seaman, was injured aboard the vessel *Conquest,* one of the ships covered under the Ralston Purina policy, although it was owned by a California corporation. Mr. Correia and his wife filed suit in California; a settlement was ultimately reached requiring payment by the defendant's insurers of $500,000, in two installments. The second payment of $200,000 due June 1, 1984, was not made (in substantial part because of the insolvency of the Bedford Insurance Company, the carrier of 70% risk on the third layer of primary coverage), thus leading to the filing of the instant lawsuit.

In this action Mr. Correia and his wife sued the *Conquest's* insurance carriers and also LBB, alleging bad faith breach of the settlement agreement and other causes of action. LBB then filed a 43-page cross-complaint against some 20 defendants scattered around the world,

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verify the standing of Reinsurances Limited. Duncanson & Holt, a New York corporation, responded to these inquiries from its San Francisco office.

basically every insurer, reinsurer, intermediary or broker that had had any connection with the subject policy. LBB, which asserted it had paid the Correias the amount of the "missing settlement monies," alleged numerous causes of action.

John Holman & Sons was swept in as a cross-defendant because of its placement of a portion of the coverage in the London market, the primary charge being negligent placement of insurance. Horace, Holman & Company Ltd. (hereinafter generally "Horace, Holman" or "Horace, Holman & Company"), was named as the alleged successor of John Holman & Sons.

3. The Motions To Quash.

John Holman & Sons and Horace, Holman & Company moved to quash service on the cross-complaint asserting lack of the minimum contacts required by the Due Process Clause of the Fourteenth Amendment for California to assert personal jurisdiction over them. Supporting declarations established without contradiction that John Holman & Sons was not present in California, did not do business here, had had no dealings with the California corporation owning the *Conquest*, did not know that any of the insured vessels were owned by a California corporation or had a California home port or even sailed in California waters, and did not intend to cause any effect in California. (App. A18 - A32.)

It was further shown that John Holman & Sons was still in operation; that Horace, Holman & Company was not present in California, had had no connection with the subject policy (Horace, Holman was not then in existence) and was not the successor of John Holman & Sons; that Horace, Holman had merely purchased certain good will from John Holman. (App. A15-A17.)

The Superior Court originally granted the motion to quash service on the cross-complaint as to both John Holman & Sons and Horace, Holman & Company. However, the court eventually reconsidered this ruling at the same time it heard John Holman's motion to quash service on plaintiffs' amended complaint, which substantially duplicated the cross-complaint (service having been made on John Holman, but not Horace, Holman). This time the motions to quash were denied.

The Superior Court's decision treats John Holman & Sons and Horace, Holman & Company collectively; the only fact cited with respect to "Holman" is that it had placed and acknowledged placement of insurance coverage which contained the New York suable clause: "Accordingly, Holman is part of the chain of insurance, subject to U.S. jurisdiction."

The court went on to state: "Holman need not have intended to cause an effect in California by its placement of a layer of insurance on a California vessel. However, such act could reasonably have been expected by Holman to have an effect in California. Further, insurance and its effects on California residents are subject to regulation by California." The court concluded that limited personal jurisdiction could properly be exercised over "Holman."

4. The Petitions For Relief.

On August 15, 1985, John Holman & Sons and Horace, Holman & Company jointly filed a timely petition for writ of mandate to compel the Superior Court to grant their motions to quash service[4] and for other relief. The next day the petition was summarily

[4]The Superior Court's original decision had not clearly decided all issues before it on the motions. Therefore John Holman & Sons

denied with the statement: "The petition is denied because no abuse of discretion was shown." (App. A13.) A timely petition for review was filed in the California Supreme Court. This, too, was summarily denied. (App. A14.)[5]

REASONS FOR GRANTING REVIEW

I.

CALIFORNIA'S ASSERTION OF PERSONAL JURISDICTION OVER PETITIONERS REPRESENTS A QUANTUM LEAP BEYOND THE BOUNDARIES ESTABLISHED BY THIS COURT'S DECISIONS, VIOLATES ACCEPTED STANDARDS OF DUE PROCESS AND THREATENS SETTLED PRINCIPLES OF INTERNATIONAL COMITY.

California's assertion of personal jurisdiction over a London insurance broker solicited by a Canadian corporation to perform services in the United Kingdom gives a new meaning to the term "long-arm jurisdiction". That California also asserts personal jurisdiction over a second English corporation based upon its relations with the first dramatically reveals the extent to which California has shed the constitutional constraints previously articulated by this Court.

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and Horace, Holman & Company had renewed their motions to quash or in the alternative to dismiss for inconvenient forum or for clarification of the order, in conjunction with which they were granted an extension of time within which to petition for writ of mandate under Code of Civil Procedure section 418.10. The Superior Court denied the renewed motion without further hearing. (App. A1-A2.)

[5]The petition for review rasied both the jurisdictional issues and the due process/equal protection challenge to the California rule providing for only discretionary review of these issues coupled with a rule finding waiver of the jurisdictional issues if a party subsequently defends on the merits.

"The Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants." *Kulko v. Superior Court,* 436 U.S. 84, 91 (1978). It is, however, no limitation at all if it permits the assertion of personal jurisdiction in this case. Until now, it has seemed clear, even if perhaps not expressly stated by this Court, that a state may not simply reach around the world to assert jurisdiction based upon some metaphysical notion that the acts of a person somewhere in the world had a local effect in California. Thus, until now it was settled that California could not properly assert jurisdiction over a party like John Holman even if Holman had been directly solicited regarding placement of insurance by a California resident. To the contrary "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state. . . . [I]t is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state thus invoking the benefits and protections of its laws." *Hanson v. Denckla,* 357 U.S. 235, 253 (1958); *Helicopteros Nationales De Columbia, S.A. v. Hall,* ___ U.S. ___, 104 S.Ct. 1868, 1873 (1984). John Holman did no such thing; and Horace, Holman did not even exist at the time the Ralston Purina policy was placed.

California appears to have adopted a "foreseeable effect" or expanded "stream of commerce" test for personal jurisdiction which is fundamentally at odds with any semblance either of " 'fair play and substantial justice' ", *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945), or the prudential restraint necessary in international relations. In *World-Wide Volkswagen*

Corp. v. Woodson, 444 U.S. 286, 295 (1980) the Court explained that "foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause," yet the decision in this case rests on just such as basis. A London brokerage house may place insurance which insures things anywhere in the world; the Ralston Purina fleet alone might travel anywhere. But if a seller of a product cannot be haled before a court anywhere his product happens to wind up, *id.* at 296, how can a person who sells no product but only performs a service be haled anywhere in the world depending merely on the location of a product with which his services have some connection?

Foreseeability alone is too shapeless a premise for application of constitutional principles of due process; a vessel is, like the automobile considered in *World-Wide Volkswagen*, inherently mobile; it (and its insurance coverage) may cause an "effect" wherever it goes. The relevant foreseeability, however, is that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." 444 U.S. at 297. A person who does not do business in California, who performs services only in London and is sought out and engaged to do so by a Canadian corporation cannot reasonably be expected to anticipate that he will have to answer for his conduct in a California court.

Even if one assumes that the various states in this country may assert jurisdiction over citizens of other states simply on the basis of an effect caused in the forum, the assertion of personal jurisdiction over a corporate citizen of the United Kingdom which performed services entirely in its homeland surpasses all bounds of reason and fairness. The federal courts have quite consistently held that " 'the foreign-act-with-

forum-effects jurisdictional principal "must be applied with caution, particularly in an international context" ' ", *Pacific Trading Co. v. M/V Main Express,* 758 F.2d 1325, 1330 (9th Cir. 1985); *Kramer Motors, Inc. v. British Leyland, Ltd.,* 628 F.2d 1175, 1178, *cert. denied,* 449 U.S. 1062 (9th Cir. 1980); *Leasco Data Processing Equipment Corp. v. Maxwell,* 468 F.2d 1326, 1341 (2nd Cir. 1972).)

As one court has stated, "the analysis of reasonableness may take into account the nature of the sovereignity of a defendant's state. We do not minimize the sovereignty of the states within our federal system when we conclude that foreign nations present a higher sovereignty barrier than that between two states within our union." *Insurance Co. of North America v. Marina Salina Cruz,* 649 F.2d 1266, 1272 (9th Cir. 1981). The reasons for a more restrained exercise of jurisdiction as respects foreign citizens, particularly when they are sought out in their homeland, are obvious. This Court's observation in a related context is apt:

> "We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts." *M/S Bremen v. Zapata Off-Shore Company,* 407 U.S. 1, 9 (1972).

A recent commentary explains:

> "It is also important that other nations consider United States jurisdictional policy to be fair. If other nations believe that American policy unfairly disadvantages their citizens or that it proceeds from fiat rather than principle, they are apt to resist enforcement efforts and perhaps to retaliate with countermeasures of their own. Predictability imbues a finding of

> jurisdiction with a minimum degree of fairness. If an individual can foresee that a course of conduct may subject him to a state's jurisdiction, yet chooses to pursue that course nonetheless, his 'being haled into court' at a later date will not appear unjust." Note, *Predictability and Comity: Toward Common Principles of Extraterritorial Jurisdiction* (1985) 98 Harv. L. Rev. 1310, 1320-1321 (fns. omitted); see also *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S. at 239.

Due process should forbid California from asserting jurisdiction in this case even if the California corporation which owned the *Conquest* had itself called John Holman & Sons in London and asked that it place insurance in the London market. The lack of any such direct connection, however, illustrates the limitless and unfair nature of the trial court's analysis. A "chain of insurance" or of other commercial transactions may stretch around the world, as witness this case. The "effect" of the transaction in California is the same regardless how far the chain stretches, how isolated the transaction, how remote the connection with the transaction and how little the knowledge of any potential for a California effect. John Holman & Sons, for example, was engaged by a Canadian corporation to place insurance in London; it in turn dealt with a Hong Kong company, a Cayman Islands corporation and various London underwriters.

Consider, also, Horace, Holman & Company, which did not receive the individual assessment of its contacts enjoined by this Court. See *Calder v. Jones, supra,* 104 S.Ct. at 1487; *Rush v. Savchuk,* 444 U.S. 320, 332 (1980); it had no connection with California *or* the Ralston Purina policy, but merely purchased certain good will

from John Holman & Sons. Did this purchase, too, foreseeably cause some indefinable effect in California? To say so makes both foreseeability and effect so attenuated as to permit any court anywhere to assert jurisdiction over anyone.

The exercise of jurisdiction over a foreign national who provided services in its own country at the request of a corporate citizen of another country is unwarranted, inequitable and capricious, whether or not this activity caused a foreseeable but unintended California effect of some ephemeral kind. We are aware of only one case which bears a strong factual similarity to this one (at least as respects John Holman & Sons) and it flatly rejects the assertion of jurisdiction.

In *Birmingham Fire Ins. Co. v. KOA Fire & Marine Ins. Co.*, 572 F.Supp. 962 (S.D.N.Y. 1983), two insurance companies sued KOA Fire & Marine Insurance Co., Ltd. ("KOA") for allegedly refusing to indemnify pursuant to certain reinsurance agreements to which KOA had been committed by American Agency Underwriters, Inc. ("AAU"). KOA commenced a third party action against AAU, Pierre LeBlanc (International) and Co., Ltd. ("LeBlanc") (an insurance brokerage) and 59 other reinsurance companies and reinsurance intermediaries. Much as in this case, LeBlanc, a French corporation, and others were alleged to have breached their fiduciary duties to KOA. LeBlanc moved to quash service.

KOA argued, *inter alia*, in terms almost identical to those used by the trial court, that "LeBlanc knew that it was a link in a chain of participants in a scheme to effectuate the reinsurance of New York risks" and had therefore supplied services or otherwise had engaged in some purposeful activity in New York. The court rejected these arguments stating (at 967):

> "It is of course true that a reinsurance broker who arranges for foreign retrocessionaires to participate in a pool involving New York risks provides some incidental benefits to insured parties in New York. In an extremely attenuated sense, LeBlanc, in its role as broker, ends up supplying some services to these insured parties, but this purported supplying of services, which is three, four, or five steps of transactions removed from the initial insured parties in New York, is far too attenuated a contact to justify [the] exercise of *in personam* jurisdiction.' [Citing *World-Wide Volkswagen, supra,* 444 U.S. at 299.] LeBlanc's role is more properly seen as supplying services in Pennsylvania to AAU and in foreign countries to the foreign reinsurers that it has contacted and persuaded to participate in the AAU pool." See also *Birmingham Fire Ins. Co. v. KOA Fire & Marine Ins. Co.,* 572 F.Supp. 969 (S.D.N.Y. 1983) [motion to quash made by another party in the action].

The case as to John Holman & Sons (and *a fortiori* as to Horace, Holman & Company) is even stronger. Its dealings were entirely with foreign companies within the United Kingdom; unlike LeBlanc it did nothing anywhere in the United States. It performed services in the United Kingdom at the request of a Canadian corporation. It had no reason to expect that if the propriety of its conduct were ever called in question it might have to defend itself in a California court, whether in a cross-action by a Missouri corporation with whom it had had no dealings nor, even more remotely, a party injured on a boat insured under a policy issued to a Missouri corporation.

It is particularly important now that more and more commercial transactions assume international dimensions that the foreign citizens who may be solicited to become a link in a chain which may ultimately stretch back to California or any other state be given fair warning if this alone is sufficient for them to be haled around the world into any of the courts in this country. It is neither fair nor appropriate that such a major jurisdictional innovation, with its potential consequences for California and the United States, be made ad hoc. To the contrary, if California's long-arm jurisdiction is to be, like the universe, finite but unbounded, principles of due process of law must be radically revised.

II.

THE DUE PROCESS AND EQUAL PROTECTION PROVISIONS OF THE FOURTEENTH AMENDMENT REQURE CALIFORNIA TO AFFORD PLENARY NON-DISCRETIONARY REVIEW OF A MOTION TO QUASH MADE ON FEDERAL CONSITUTIONAL GROUNDS.

The California Court of Appeal summarily denied the petition for writ of mandate on behalf of John Holman and Horace, Holman, tersely observing that no abuse of discretion had been shown. However, the primary basis of the petition was that the Due Process Clause forbids the exercise of personal jurisdiction over either John Holman & Sons or Horace, Holman & Company. This is obviously not a matter of discretion.

Under California law, Petitioners can now defend themselves on the merits only at the cost of their right to contest California's exercise of personal jurisdiction. *McCorkle v. City of Los Angeles*, 70 Cal.2d 252, 257-258 (1969); *Danzig v. Jack Grynberg & Associates*, 161 Cal.App.3d 1128, 1140-1141 (1984). The State of

California has thus radically limited the rights of foreigners in its courts, denying to them the right to defend themselves on the merits and still obtain appellate review of this federal constitutional issue as a matter of right. This constitutes a denial of due process of the law and invidious discrimination against non-Californians. Either the California waiver rule is invalid or non-discretionary interlocutory review of the denial of Petitioners' motion to quash is constitutionally required.

Unlike California, the federal courts and the majority of all state courts permit a party to contest personal jurisdiction on an appeal from a judgment on the merits if the issue has been properly preserved. See generally Annot., *Litigant's participation on merits, after objection to jurisdiction of person made under special appearance or the like has been overruled, as waiver of objection,* 62 A.L.R.2d 937. In *Michigan Central Railroad Co. v. Mix,* 278 U.S. 492 (1929) this Court ruled that a foreign corporation could not be held to forfeit its constitutional right to object to jurisdiction under an arbitrary rule of local practice. "Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler,* 263 U.S. 22, 24 (1923); see *James v. Kentucky,* ___ U.S. ___, 104 S.Ct. 1830, 1836 (1984); *Henry v. Mississippi,* 329 U.S. 443, 447-448 (1965); *N.A.A.C.P. v. Alabama,* 377 U.S. 288, 293-301 (1964); *Wright v. Georgia,* 373 U.S. 284, 289-291 (1963).

If a party properly moves to quash service on due process grounds and thereafter seeks but is denied review by petition for writ of mandate, there is no legitimate reason why this fully preserved jurisdictional contention

should not be reviewable on an appeal from the judgment.[6] But assuming California has the right to establish a different method for review of the issue of personal jurisdiction than for other issues, that method cannot treat the assertion of federal constitutional rights less favorably than the assertion of state created rights. By making a petition for writ of mandate the only means of obtaining review (without defaulting) this is precisely what California has done *if* the review by petition for writ of mandate is permitted to be discretionary rather than mandatory.

Due process may not require that the state establish appellate courts, but once it has done so, the right of review cannot "be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." *Lindsey v. Normet,* 405 U.S. 56, 77 (1972); *Rinaldi v. Yeager,* 384 U.S. 305, 310 (1966); *Griffin v. Illinois,* 351 U.S. 12 (1956). By construing the right of review of a motion to quash to be a matter within its discretion, California gives the invocation of traditional notions of fair play and substantial justice, i.e., basic due process, shorter shrift than the most trivial claim of error under state law, which is subject to plenary review on appeal as a matter of right, in many instances without even the need for an objection. See Cal. Code of Civil Procedure sections 647, 904.1. If a distinction is to be drawn between different rights for purposes of review by a higher court, that distinction should logically favor federal constitutional rights over state statutory rights. We submit that principles of due process and equal protection forbid the opposite result.

---

[6]A state obviously cannot properly condition one constitutional right, the right to defend oneself in court, see *Boddie v. Connecticut,* 401 U.S. 371 (1971), on waiver of another right, namely the right to due process of law. See, e.g., *Garrity v. New Jersey,* 385 U.S. 493, 500 (1967).

The absence of any right of review of a motion to quash results in systematic discrimination against foreign defendants. It places basic issues of fairness within the unreviewed "discretion" of the myriad trial judges of the State of California. It puts issues of considerable theoretical complexity, often with the potential for dramatic international implications (as in this case), on the shoulders of busy trial court judges whose decisions are typically final simply because an appellate court chooses not to consider the matter.

This is not the type of procedural due process necessary to protect a foreign defendant's right not to be haled before the courts of one of the United States. It is certainly not equal protection of the laws, as it systematically discriminates against foreign defendants and the assertion of a due process objection to jurisdiction.

Consider, for example, Horace, Holman's position. It is a London brokerage having nothing to do with the entire controversy, according to the undisputed evidence. It cannot understand what it is doing in this lawsuit or why it is in a California court. Yet California now requires that Horace, Holman choose between defending on the merits and denying jurisdiction. Horace, Holman is required to make this choice despite the total lack of any constitutional basis for jurisdiction over it simply because the trial court lumped it together for purposes of decision with John Holman & Sons and then the California appellate courts denied review of this constitutional issue as a matter of their discretion. It is difficult to explain to this corporate citizen of the United Kingdom why the most inconsequential statutory issue raised by a California resident is reviewable on appeal as a matter of right while Horace, Holman &

Company goes begging for appellate relief to which it is indisputably entitled on the merits.

This systematic procedural discrimination obviously compounds the inequity of the extraordinary jurisdictional principles on which the lower court's ruling rests. It necessarily contributes to the sense of unpredictability and unfairness caused by the court's ruling. Jurisdictional principles should not be made and applied in an unreviewed ad hoc manner, especially as regards foreign nationals.

We respectfully urge this Court to grant review to determine whether principles of due process and equal protection of the law require that California afford plenary non-discretionary review of a motion to quash based upon federal constitutional grounds.

CONCLUSION

For all of the foregoing reasons, we respectfully pray that this Court will review the important issues presented by this case.

Respectfully submitted,

MORGAN, WENZEL & MCNICHOLAS
W. MARSHALL MORGAN
WALTER M. YOKA
GRETCHEN M. NELSON

GREINES, MARTIN, STEIN & RICHLAND
ALAN G. MARTIN

By _____
ALAN G. MARTIN

Attorneys for Petitioners
JOHN HOLMAN & SONS LTD.
AND HORACE, HOLMAN & COMPANY LTD.

APPENDIX

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DATE July 26, 1985 MINUTES DEPT. 35
PRESENT: HON. MACK P. LOVETT JUDGE
CLERK NELLIE PERNICANO REPORTER NOT PRESENT
BAILIFF NOT PRESENT

RECEIVED
JUL 30 1985

526828 DONALD J. CORREIA, et al,

Plaintiffs

vs.

CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al,

Defendants.

ON THE DIRECTION OF THE COURT:

MINUTE ORDER

The above entitled matter came before this Court on April 19, 1985, at 9:00 A.M. for cross defendant's motion to quash service of summons. The matter having been argued and submitted the Court made a decision in said matter dated July 10, 1985. On July 24, 1985, from an ex parte hearing cross defendant scheduled a renewed motion to quash service of summons scheduled for August 8, 1985, at 9:00 A.M. in Dept. 35.

The Court makes the following rulings in this matter:

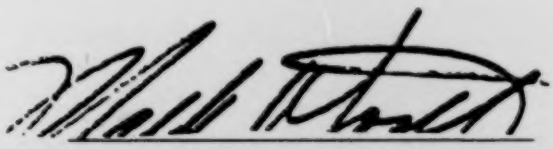
1. Cross defendants' Horace Holman & Company and John Holman & Sons Limited (Holman) motion to quash service of summons is denied.

2. Cross defendants' Horace Holman & Company and John Holman & Sons Limited (Holman) renewed motion to quash service of summons for lack of jurisdiction or in the alternative to dismiss for inconvenient forum; or alternatively for clarification of this Court's order is denied. (Motion filed July 24, 1985)

3. The Court having ruled on cross defendants renewed motion to quash service of summons takes this matter off calendar for the proposed hearing date of August 8, 1985, at 9:00 A.M. in Dept. 35.

4. Attached to this minute order is order of the Court executed and filed July 26, 1985, in this matter. The Court directs the clerk to mail to all parties partaking in this motion a copy of this minute order.

Dated: July 26, 1985



MACK P. LOVETT, JUDGE

PAGE ONE OF ONE

Subscribed and sworn to
before me this 31st
day of January,
1985.

NOTARY PUBLIC

This Affidavit was telexed to the Offices of Morgan, Wenzel & McNicholas on January 31, 1985. A fully-executed Affidavit in the exact form as this will be filed with this court before the hearing on this motion.

GRETCHEN M. NELSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JUL 26 1985

BY M. PERNICANO, DEPUTY

Case No. 526828

DONALD J. CORREIA, et al.,
Plaintiffs,
v.
CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al.,
Defendants.
AND RELATED CROSS-ACTIONS.

ORDER RE: MOTION TO QUASH SERVICE OF SUMMONS FOR LACK OF JURISDICTION OR IN THE ALTERNATIVE TO DISMISS FOR INCONVENIENT FORUM BROUGHT BY DEFENDANTS AND CROSS-DEFENDANTS HORACE HOLMAN & COMPANY, LIMITED, AND JOHN HOLMAN & SONS, LIMITED

This cause came on regularly for hearing in Department 35 of the above-entitled court, the Honorable Mack P. Lovett, Judge Presiding, on April 19, 1985, pursuant to the following:

a) A motion was brought by defendant John Holman & Sons, Limited, to quash service of the summons on the plaintiff's complaint for lack of jurisdiction or in the alternative to dismiss for inconvenient forum;

b) A motion was brought by defendant and cross-complainant Lawton-Bryne-Bruner for reconsideration of the court's ruling of March 7, 1985, in which the court granted a motion brought by Horace Holman & Company, Limited, and John

Holman & Sons, Limited, to quash service of the summons on the cross-complaint filed by Lawton-Bryne-Bruner.

At these motions, Horace Holman & Company, Limited, and John Holman & Sons, Limited, were represented by Gretchen Nelson of the law firm of Morgan, Wenzel & McNicholas. Lawton-Bryne-Bruner was represented by James Gorman of the law firm of Ault, Midlam & Deuprey. The plaintiffs were represented by John Reed of the law firm of Reed & Reed. Defendants and cross-defendants Canadian International Marine Underwriters, Limited, and Canadian Marine Underwriters, Limited, were represented by Donald Gilbert of the law firm of Knapp, Peterson & Clarke. The court, having considered the pleadings, the documents presented and filed with respect to these motions, and the court having heard and considered the contentions of all counsel, and the court having been fully advised in the premises,

IT IS HEREBY ORDERED that the motions brought by John Holman & Sons, Limited, to quash service of the summons on the plaintiffs' complaint and by Horace Holman & Company, Limited and John Holman & Sons, Limited, to quash service of the summons on the cross-complaint filed by Lawton-Bryne-Bruner are denied. The reasoning of the court is set forth in the minute order attached hereto as Exhibit "A" and incorporated herein as though set forth at length.

7/26/85

Dated: _____

JUDGE OF THE SUPERIOR COURT
MACK P. LOVETT

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DATE July 11, 1985 MINUTES DEPT. 35
PRESENT: HON. MACK P. LOVETT JUDGE
CLERK NELLIE A. PERNICANO
REPORTER NOT PRESENT
BAILIFF NOT PRESENT

526828 DONALD J. CORREIA, et al,

Plaintiffs

vs.

CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al,

Defendants.

By: John Reed

By: Gretchen Nelson,
James Gorman,
Donald Gilbert

ON THE DIRECTION OF THE COURT:

MINUTE ORDER RE: RULING ON CIVIL LAW AND MOTION SUBMITTED MATTER

The above entitled matter came before this Court on April 19, 1985, at 9:00 A.M. for cross defendant's motion to quash service of summons with the above named counsel present. The matter having been argued and submitted, the Court makes a ruling that is attached hereto entitled DECISION dated July 10, 1985.

-nap-

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

FILED
JUL 11 1985
BY N. PERNICANO, DEPUTY

DONALD J. CORREIA and CHERYL MARIE CORREIA, Plaintiffs, vs. CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, SOCIETA ITALIANO ASSICURAZIONI TRANSPORTI (SIAT), AMERICAN CONTINENTAL, LONDON UNDER-WRITERS, CONTINENTAL INSURANCE COMPANY, LLOYDS AND LONDON COMPANIES and H. ROBERT LARKIN and DOES 1 through 25, inclusive, Defendants. AND RELATED CROSS-ACTION.	No. 526828 DECISION

1. On March 7, 1985, before the Honorable Mack P. Lovett in Department 35, a hearing was conducted regarding cross-defendants Horace Holman & Company and John Holman & Sons Limited (Holman) motion to quash service of summons for lack of jurisdiction. Holman was represented by counsel Gretchen Nelson and Walter Yoka. Opposition was filed by attorneys James Gorman and Ault, Midlam & Deuprey. James

Gorman appeared in Court in opposition on behalf of cross-complainants Lawton, Bryne & Bruner Insurance Agency (LBB). Attorney Ron Hapkins appeared for defendant Canadian International Marine Underwriters (Canadian). At the conclusion of the hearing, the Court granted cross-defendants' (Holman's) motion to quash service of summons and denied LBB's motion to continue the hearing.

2. On Friday, April 19, 1985, another hearing was conducted in Department 35 before Honorable Mack P. Lovett on LBB's motion for reconsideration of the Court's ruling on Thursday, March 7, 1985. Attorney John Reed appeared for the plaintiff, Donald J. Correia; Gretchen Nelson appeared for Holman; and Donald Gilbert appeared for Canadian; and James Gorman appeared for LBB.

3. The Court granted the motion for reconsideration, the matter was argued and the Court took the matter under submission.

II. **DECISION:**

1. The Court has determined that cross-defendant's motion to quash service of summons should be denied for the reasons that follow.

Counsel for the defendant and cross-complainant LBB is to prepare a formal order in accordance with this ruling.

III. **ANALYSIS:**

1. In order for limited jurisdiction over Holman to lie, it must be demonstrated that the cause of action arises out of an act done or transaction consummated in California or that Holman purposely availed itself of the privilege of conducting activities in California.

2. The Court makes the following findings:

a. The plaintiffs are residents and citizens of the State of California;

b. The vessel where the injury occurred had its home port in San Diego, California;

c. The vessel was owned by a California corporation whose primary principal is a California resident;

d. Insurance on the vessel was arranged by a California corporation and LBB's bills for premiums were sent to California and paid from California;

e. The insurance policy delivered by LLB to the managing corporation and its principals are all located in California;

f. The insurance policy provided for suit against any underwriter in any competent court in the United States (New York suable clause) and the Holman cover note acknowledged that it has effected insurance subject to the same terms, clauses and conditions as the underlying policy and/or policies. Accordingly, Holman is part of the chain of insurance, subject to U.S. jurisdiction.

3. The case of *McGee v. International Life Insurance* (1957) 355 U.S. 220 is persuasive in this matter. The Court in *McGee* held that it was sufficient to satisfy due process if the contract had substantial connection with California. In *McGee,* the Texas insurance company, as Holman in the instant case, was not the original insurer. An Arizona company, analogous to LBB, which is also a non-California corporation, was the original insurer. In *McGee,* the Texas company assumed its obligations, sent a reassurance certificte to the California residents, which the resident accepted and paid premiums thereon. The insurance contract in the instant case has substantial contacts with California, was

delivered in California, and the premiums were paid there also. These factors appear critical in the *McGee* decision and are supportive of LBB's position.

4. In the case of *Quattrone v. Superior Court* (1975) 44 Cal.App.3d 256, the California court held that it is reasonable to exercise jurisdiction on the basis of a defendant intentionally causing effects in the State by an omission or an act done elsewhere whenever the effects are of a nature that the State treats as exceptional and subject to special regulation.

5. Witkin notes that the rule based on *McGee* has been outlined in the second restatement of Conflict of Law, Section 37, which provides in part that the act, although not done with the intention of causing effects in the State, could reasonably have been expected to do so.

6. Accordingly, Holman need not have intended to cause an effect in California by its placement of a layer of insurance on a California vessel. However, such act could reasonably have been expected by Holman to have an effect in California. Further, insurance and its effects on California residents are subject to regulation by California.

V. **CONCLUSION:**

This Court has determined that it is both reasonable and fair for the State of California to exercise limited jurisdiction over Holman in this particular action.

DATED: _____

MACK P. LOVETT

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

Case No. 526828

CLERK'S CERTIFICATE OF SERVICE
BY MAIL (CCP 1013a[3])

Robert D. Simmons, Clerk
JUL 11 1985
BY M. PERNICANO, DEPUTY

I HEREBY CERTIFY:

I am not a party to the cause referred to herein.

On the date as shown below, at [San Diego], [XXX], California, I placed a true copy of MINUTE ORDER dated July 11, 1985 and DECISION dated July 10, 1985

in a separate envelope addressed to each addressee as listed below and each envelope was then sealed and deposited in the mail with the postage fully prepaid:

James Gorman, Esq.
Ault, Midlam & Deuprey
5030 Camino de la Siesta, Suite 201
San Diego, California 92108

Andre E. Jardini, Esq.
Knapp, Peterson & Clarke
70 Universal City Plaza, Suite 400
Universal City, California 91608

John S. Rhoades, Esq.
Rhoades, Hollywood & Neil
1010 Second Avenue, Suite 1712
San Diego, California 92101

Gretchen M. Nelson, Esq.
Morgan, Wenzel & McNicholas

1545 Wilshire Blvd. Suite 800
Los Angeles, California 90017

Janet L. Grove, Esq.
O'Connor, Cohn, Dillon & Barr
70 Gold Street at Montgomery
P. O. Box 26690
San Francisco, California 94126

Bonnie Bass, Esq.
Hagenbaugh & Murphy
3701 Wilshire Blvd. 4th Floor
Los Angeles, California 90010

Daniel B. McLeod, Esq.
Alford & MacLeod
701 "B" Street, Suite 1625
San Diego, California 92101

John W. Reed, Esq.
Reed & Reed
7610 Girard Avenue, Suite 200
La Jolla, California 92037

Dated July 11, 1985

ROBERT D. ZUMWALT, Clerk

By Nellie A. Pernicano

Deputy
Nellie A. Pernicano

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

DIVISION ONE

FILED
Keenan G. Casady, Clerk
AUG 16 1985
COURT OF APPEAL FOURTH DISTRICT

JOHN HOLMAN & SONS, LTD., et al.,

Petitioners,

v.

SUPERIOR COURT, etc., COUNTY OF SAN DIEGO,

Respondent;

DONALD J. CORREIA, et. al.,

Real Parties in Interest.

No. D003476

SUPERIOR COURT NO. 526828

THE COURT:

The petition for writ of mandate has been read and considered by Justices Staniforth, Butler and Brainard.* The petition is denied because no abuse of discretion was shown.

Acting *Presiding Justice*

Copies to: All Parties

*Assigned by the Chairperson of the Judicial Council.

25675-1145-82 5M CAM• OSP

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

SEP 25 1985

I have this day filed Order

REVIEW DENIED

In re: *No.* D003476

JOHN HOLMAN & SONS LTD.

vs.

SUPERIOR COURT, SAN DIEGO

Respectfully,

Clerk

-877 8-82 4M● OSP

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES OF
MORGAN, WENZEL & MCNICHOLAS
A PROFESSIONAL CORPORATION
1545 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
(213) 483-1981

Attorneys for Cross-Defendants, JOHN HOLMAN & SONS, LIMITED and HORACE HOLMAN & CO., LIMITED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CASE NO. 52 68 28

AFFIDAVIT IN SUPPORT OF CROSS-DEFENDANT'S MOTION TO DISMISS THE CROSS-COMPLAINT OF LAWTON-BRYNE-BRUNER OR IN THE ALTERNATIVE TO REMOVE FOR FORUM NON CONVENIENS

CITY OF LONDON)
) ss:
COUNTRY OF ENGLAND)

PETER DENNIS HORTON being duly sworn, deposes and says:

1. I am the managing director of Horace Holman & Company, Ltd, (hereinafter "Horace Holman") and offer this Affidavit in support of the within Motion to Dismiss the Cross-Complaint of Lawton-Bryne-Bruner.

2. I have personal knowledge of the facts stated below and if called to testify could do so competently.

3. I urge this court to grant this Motion to Dismiss on grounds that there is no basis upon which this court in California can assert jurisdiction over Horace Holman.

4. Horace Holman was incorporated on September 4, 1984, and is a corporate citizen of the United Kingdom.

5. Horace Holman purchased from John Holman & Sons, Ltd. the good will aspect of their Lloyd's of London broking business.

6. With the exception of the purchase of the good will of John Holman & Sons' Lloyd's broking business, Horace Holman has not assumed any assets or liabilities of John Holman & Sons, and therefore Horace Holman is not now nor has it ever been the successor in interest of John Holman & Sons.

7. Horace Holman owns no share of stock in John Holman & Sons.

8. To the best of my knowledge, John Holman & Sons is still in existence.

9. Horace Holman maintains no office or agency for the purpose of carrying on business in the state of California.

10. Horace Holman is not now nor has it ever been licensed to do business in the State of California.

11. Since its inception, Horace Holman has entered into no new contracts or business within California. However, under the said transfer of the Lloyd's broking business, Horace Holman maintains some contact with certain American brokers who had previously placed business through John Holman & Sons into Lloyd's and/or other insurers in the London market, and these brokers themselves may conduct their business in, amongst other places, the State of California.

12. With reference to the alleged insurance policies in question Horace Holman was never involved nor in any way related to any of the alleged activities which led to the filing of this lawsuit. In fact, Horace Holman could not have been involved or related since it has only been in existence since September 4, 1984.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Executed this _____, 1985, in

_____

By _____

PETER DENNIS HORTON

Subscribed and sworn to
before me this 31st
day of January,
1985.

NOTARY PUBLIC

OFFICIAL SEAL
NATALIE A. MARTIN
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Jan 17, 1986

This Affidavit was telexed to the Offices of Morgan, Wenzel & McNicholas on January 31, 1985. A fully-executed Affidavit in the exact form as this will be filed with this court before the hearing on this motion.

GRETCHEN M. NELSON

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES OF
MORGAN, WENZEL & McNICHOLAS
A PROFESSIONAL CORPORATION
1948 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
(213) 483-1961

Attorneys for Cross-Defendants, JOHN HOLMAN & SONS, LIMITED and HORACE HOLMAN & CO., LIMITED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CASE NO. 52 68 28

AFFIDAVIT IN SUPPORT OF CROSS-DEFENDANT'S MOTION TO DISMISS THE CROSS-COMPLAINT OF LAWTON-BRYNE-BRUNER OR IN THE ALTERNATIVE TO REMOVE FOR FORUM NON CONVENIENS

CITY OF LONDON)
) ss:
COUNTRY OF ENGLAND)

DAVID McARTHUR HOLMAN being duly sworn, deposes and says:

1. I am the chairman and managing director of John Holman & Sons, Ltd. (hereinafter "John Holman & Sons") and offer this Affidavit in support of the within Motion of Dismiss the Cross-Complaint of Lawton-Bryne-Bruner.

2. John Holman & Sons is a corporate citizen of the United Kingdom with its principal place of business in London, England. It currently is engaged in the business of broking insurance in the London market.

3. I have personal knowledge of the facts stated below and if called to testify could do so competently.

4. I urge this court to grant this Motion to Dismiss on grounds that there is no basis upon which this court in California can assert jurisdiction over John Holman & Sons.

5 By way of background, this cross-complaint arises out of an alleged failure to properly arrange excess protection and indemnity insurance on certain fishing vessels under the ownership and/or management of Ralston Purina, Incorporated. The cross-complaint alleges negligence, fraud, breach of contract and breach of statutory duty in the placement of the said insurance covering the period December 1, 1980 to December 1, 1981.

6. At all material times, John Holman & Sons was an insurance broker licensed to do business in the United Kingdom. As an insurance broker, John Holman & Sons places insurances in the London market for clients. John Holman & Sons was never an insurer.

7. John Holman & Sons has never in the course of its existence maintained an office or agency for the purpose of carrying on business in the State of California. John Holman & Sons has never been licensed to carry on business in California.

8. As regards the insurance that is at issue in this action, John Holman & Sons was engaged by Canadian International Marine Underwriters, Ltd. (hereinafter "CIMU") which is a Canadian corporation with its principal place of business in Toronto, Canada. The relationship which existed between CIMU and John Holman & Sons was that of client/broker, with John Holman & Sons taking instructions from CIMU.

9. John Holman & Sons was engaged by CIMU to place, inter alia, 70 percent of the first layer $200,000 excess of $300,000 protection and indemnity insurance. Accordingly, John Holman & Sons contacted, amongst others, Gerald Herbert, Ltd., a corporation existing under the laws of the United Kingdom which at that time had its principal place of business in London, England, to underwrite the subject policy.

10. As regards the insured, John Holman & Sons was advised by CIMU that the policy was to cover excess protection and indemnity on a fleet of thirty-six marine vessels. The insured was Ralston Purina, Incorporated, known to be a Missouri corporation, with its principal place of business in St. Louis, Missouri.

11. John Holman & Sons had no contact with any California citizen in the placement of the first layer $200,000 excess of $300,000 excess protection and indemnity insurance. At the time of placement, John Holman & Sons had no knowledge that any of its actions would cause an effect in California, nor as regards the marine vessels, were they advised of their navigating waters and home ports. However, on the placement of another layer, $500,000 excess of $500,000, John Holman & Sons did communicate with Reinsurances Limited, a corporate citizen of the Cayman Islands, and their reinsurers who dealt with this matter through their offices in California.

12. John Holman & Sons has, in the course of carrying on their business in the London market, accepted instructions from American brokers to attempt to obtain insurance from Lloyd's and/or other insurers, which brokers may themselves conduct their business in, amongst other places, the State of California.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Executed on _____, 1985, at _____, England.

By: _____

DAVID McARTHUR HOLMAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

DONALD J. CORREIA and CHERYL MARIE CORREIA,

Plaintiffs,

vs.

CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, CANADIAN MARINE UNDERWRITERS LIMITED; MARINE OFFICE OF AMERICA CORP.; CONTINENTAL INSURANCE COMPANY; SOCIETA ITALIANO ASSICURAZIONI TRANSPORTI; F.S. JAMES & CO.; AMERICAN CENTENNIAL INSURANCE CO.; JOHN HOLMAN & SONS LTD.; HORACE HOLMAN & CO. LTD.; GERALD HERBERT LTD.; GERALD V. HERBERT; A.R. CRACKNELL; THE BEDFORD INSURANCE CO. LTD., A Hong Kong Company; A.W. KNOTT, BECKER SCOTT; LOWNDES LAMBERT, LLOYD's BROKERS, INSTITUTO DE RESSAGUROS DO BRASIL; REINSURANCES LIMITED; DUNCANSON & HOLT, INC.; AMERICAN ACCIDENT REINSURANCE GROUP; ROBERT MURRAY COLLINS, individually and as nominee of Subscribing Underwriters to Policy 760-5121 A/B; LAWTON - BRYNE-BRUNER INSURANCE AGENCY CO., and DOES 1 through 25, inclusive,

Defendants.

CASE NO: 526828

AFFIDAVIT IN SUPPORT OF JOHN HOLMAN'S RENEWED MOTION TO QUASH THE CROSS-COMPLAINT OF LAWTON-BRYNE-BRUNER AND THE COMPLAINT OF DONALD J. CORREIA AND CHERYL MARIE CORREIA FOR LACK OF JURISDICTION OR IN THE ALTERNATIVE TO DISMISS FOR INCONVENIENT FORUM

LAWTON-BRYNE-BRUNER INSURANCE AGENCY CO., a Missouri corporation,

Cross-Complainant,

vs.

CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED; CANADIAN MARINE UNDERWRITERS LIMITED; MARINE OFFICE OF AMERICA CORPORATION; CONTINENTAL INSURANCE COMPANY; SOCIETA ITALIANO ASSICURAZIONI TRANSPORTI; F.S. JAMES & CO.; AMERICAN CENTENNIAL INSURANCE CO.; JOHN HOLMAN & SONS LIMITED; HORACE, HOLMAN & CO. LIMITED; GERALD HERBERT LIMITED; GERALD V. HERBERT; A.R. CRACKNELL; THE BEDFORD INSURANCE CO. LTD., A Hong Kong Company; A.W. KNOTT, BECKER SCOTT; LOWNDES LAMBERT, LLOYD'S BROKERS; INSTITUTO DE RESSAGUROS DO BRASIL; REINSURANCES LIMITED; DUNCANSON & HOLT, INC.; AMERICAN ACCIDENT REINSURANCE GROUP; ROBERT MURRAY COLLINS, individually and as nominee of Subscribing Underwriters to Policy 760-5121 A/B; and DOES 1 through 100, inclusive,

Cross-Defendants.

City of London)
) ss.
Country of England)

DAVID McARTHUR HOLMAN being duly sworn, deposes and says:

1. I am the Chairman and Managing Director of JOHN HOLMAN & SONS, LTD. (hereinafter referred to as "JOHN HOLMAN") and offer this Affidavit in support of JOHN HOLMAN's Renewed Motion to Quash the Summons and Cross-Complaint and Complaint for Lack of Jurisdiction.

2. I have personal knowledge of the matters stated herein and could testify competently thereto.

3. By way of background, this Renewed Motion to Quash is brought following the apparent denial of this court of JOHN HOLMAN's Motion to Quash the Cross-Complaint of LAWTON-BYRNE-BRUNER and the Complaint of the Plaintiffs, CORREIA. Briefly, this action arises out of an alleged failure to properly arrange excess protection and indemnity insurance on certain fishing vessels under the ownership and/or management of Ralston Purina Incorporated.

4. At all material times, JOHN HOLMAN is and was a corporate citizen of the United Kingdom engaged in the business of placing insurance in the London market. JOHN HOLMAN is not now nor has it even been an insurer. Thus, JOHN HOLMAN is not and never has been a party to any insurance contract that is at issue in these proceedings.

5. As regards the insurance contracts that are at issue in this action, JOHN HOLMAN was engaged by CANADIAN INTERNATIONAL MARINE UNDERWRITERS, LTD. hereinafter referred to as "CIMU". The relationship of JOHN HOLMAN to CIMU was that of broker/client, with JOHN HOLMAN acting upon the instructions received from CIMU.

6. It has been suggested in this court's Decision dated July 10, 1985 that the inclusion of clause entitled "New York Suable Clause" in a particular covernote has some bearing upon the question of jurisdiction with regard to JOHN HOLMAN. For the reasons that are detailed below, such is not the case.

7. Initially, and by way of background, a covernote is a document which sets out the terms of the insurance contract which has been effected by the broker. Normally the covernote will be replaced in due course by a policy; as is the case with the subject covernote. By issuing the covernote, the broker does not incur liability upon the insurance, since he does not purport to be an insurer. The covernote made reference to in L.B.B.'s Motion for Reconsideration operated as a confirmation of the insurance requested by and placed pursuant to the instructions of CIMU, the client of JOHN HOLMAN.

8. The subject covernote is addressed to CIMU and begins

> "In accordance with your instructions we have effected insurance as recorded below. Kindly verify the particulars and if incorrect notify immediately".

There is contained in the paragraph entitled "INFORMATION: (not limit or warranty)" the "New York Suable Clause". The subject insurance contract is an excess protection and indemnity insurance and is, as stated in the paragraph entited "CONDITIONS: subject to the same terms, clauses and conditions as underlying policy or policies". The terms, clauses and conditions of the underlying policy are specified in the said covernote under "INFORMATION". As far as the brokers are concerned, thereby indicating to CIMU that this information has been given to the underwriter at the

time of placing and also gives CIMU the opportunity to revert with any amendments on erroneously placing information. The effect of this clause is simply that the insurer, and not any other party, person or entity may have bound itself to the jurisdiction set forth in that clause for any claims against it arising out the subject insurance policy. If such an agreement exists, it is solely between the insurer and the insured. In fact, as usually the case, the information given to the underwriters at the time of placing and which is set out in the brokers' covernote with regard to the terms, clauses and conditions of the underlying policy, does not appear in the excess protection and indemnity policy which is issued at a later stage.

8. As noted above, JOHN HOLMAN was not, nor has it ever been, an insurer or a party to the subject insurance policy. Thus, the existence or inclusion of the so-called "New York Suable Clause" in the covernote has no bearing whatsoever upon the relationship of JOHN HOLMAN to any party in these proceedings. Although the "New York Suable Clause" may have been a part of a contract between the insurer and the insured, for which the insurer was bound to comply, it most assuredly had no effect upon the position of JOHN HOLMAN herein. In short, JOHN HOLMAN has never been a party to any insurance contract, wherein it agreed to subject itself to the jurisdiction of the State of California or to any other state of the United States of America.

9. Further, and to the extent that this honorable court finds such significant, it should benoted that JOHN HOLMAN has never had any contact whatsoever, business or otherwise, with individuals identified by name as Joseph Magruga, Donald J. Correia, or for that matter any officer and or director of entity entitled "The Conquest Fishing Corporation".

10. Further, it has been suggested that JOHN HOLMAN had "contact" with California with regard to the placement of reinsurance with DUNCANSON & HOLT. In this regard, we ask this court to note that JOHN HOLMAN's placing file on the Ralston Purina account shows that the placement of the layer US $500,000 excess of US $500,000 excess protection and indemnity insurance was placed with REINSURANCES LIMITED in London, England. This excess coverage was discussed and brokered between Mr. Pat Barr (formerly of JOHN HOLMAN) and Mr. David Fenix, then President of REINSURANCES LIMITED, upon the occassion of a visit to London by Mr. Fenix when I was informed that he was, inter alia, promoting business opportunities within the London market.

11. To the best of my knowledge and belief, JOHN HOLMAN had not placed business with REINSURANCES previous to the Ralston Purina account and therefore required a clarification of its security. Mr. David Fenix assured JOHN HOLMAN that REINSURANCES was of good financial standing and was reinsured 99.5% with the American Accident Reinsurance Group, whose managing agents were DUNCANSON & HOLT. We accordingly sought information of this fact from DONCANSON & HOLT. In this regard, we telexed the offices of DUNCANSON & HOLT for said confirmation and received confirmation by telex from the San Francisco of DUNCANSON & HOLT.

12. JOHN HOLMAN had no contact with California with regard to the placement of the layer US $200,000 excess US $300,000 which layer was also placed entirely in London. And, JOHN HOLMAN had no contact with California with regard to the placement of the layer US $500,000 excess of US $1,000,000. This excess coverage

was placed entirely and exclusively in London with various LLOYD'S syndicates and London companies.

13. In short, there has been no contact by JOHN HOLMAN with California with regard to the placement of any portions of the policy of insurance that is at issue. In this regard, we ask this court to reconsider the Decision dated July 10, 1985 and grant JOHN HOLMAN's Motion to Quash Service of both the Complaint and Cross-Complaint in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 1985, at London, England.

BY: _____

DAVID McARTHUR HOLMAN

This Affidavit was telexed to the offices of Morgan, Wenzel & McNicholas. A fully executed Affidavit which sets forth the same facts as this will be filed with this court before the hearing on this Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of July, 1985, at Los Angeles, California.

BY: _____

GRETCHEN M. NELSON

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner_____ ☐ a ____ of _____

_____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19 ____, at _____ California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name _____ Signature _____

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19____

Type or Print Name _____ Signature _____

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1545 Wilshire Boulevard, Suite 800, Los Angeles, CA 90017

On July 24 1985, I served the foregoing document described as RENEWED MOTION TO SQUASH SERVICE OF THE SUMMONS FOR LACK OF JURISDICTION OR IN THE ALTERNATIVE TO DISMISS FOR INCONVENIENT FORUM on interested parties

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☐ (BY MAIL) I caused such envelope with postage theron fully prepaid to be placed in the United States mail at _____, California.
Executed on _____,
19 ____, at _____,
California.

X (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
Executed on July 24, 19 85,
at Los Angeles, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

GRETCHEN M. NELSON
Type or Print Name

_____
Signature

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on November 8, 1985, I served the within *Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(Original and forty copies)

Andre E. Jardini, Esq.
Knapp, Peterson & Clarke
70 Universal City Plaza
Suite 400
Universal City, California 91608

James Gorman, Esq.
Ault, Midlam & Deuprey
5030 Camino de la Siesta
Suite 201
San Diego, California 92108

John W. Reed, Esq.
Reed & Reed
7610 Girard Avenue
Suite 200
La Jolla, California 92037

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 8, 1985, at Los Angeles, California.

Joy Rivelli Miller
(Original signed)

BEST AVAILABLE COPY

No. 85-802

Supreme Court, U.S.
FILED
DEC 12 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

October Term, 1985

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY, LTD.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIIONAL MARINE UNDERWRITERS LTD., and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

REAL PARTY'S BRIEF IN OPPOSITION

AULT, MIDLAM & DEUPREY
KEVIN W. MIDLAM, ESQ.
JAMES GORMAN, ESQ.
5030 Camino de la Siesta, Suite 201
San Diego, California 92108
(619) 295-1202

Attorneys for Real Party In Interest
LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY

INTERIM PRINTING & MAILING COMPANY
1105 WEST MORENA BOULEVARD, SAN DIEGO, CALIFORNIA 92110 — 275-3050

QUESTIONS PRESENTED

The petition requests this Court to consider the following questions:

(1) Whether the Superior Court for the State of California properly determined that a foreign corporation that placed a layer of insurance covering a fleet of fishing vessels whose home port was San Diego, California, could have reasonably expected to cause an effect in California such as to permit the exercise of in personam jurisdiction by a California Court.

(2) Whether the Superior Court for the State of California properly determined that it could exercise in personam jurisdiction over a foreign corporation which purchased an undisclosed percentage of the assets of the aforementioned corporation.

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No. 85-802

IN THE

Supreme Court of the United States

October Term, 1985

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY, LTD.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIIONAL MARINE UNDERWRITERS LTD., and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

REAL PARTY'S BRIEF IN OPPOSITION

Real Party in Interest, Lawton-Byrne-Bruner, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the order and opinion of the Superior Court of the State of California denying petitioners' motions to quash service of summons for lack of personal jurisdiction.

JURISDICTION

This Court has jurisdiction, under 28 U.S.C. Section 1257, subdivision (3), to consider the first two questions raised in the Petition for Writ of Certiorari. See *Calder v. Jones*, __ U.S. __, 104 S.Ct. 1482, 1486 n. 8 (1984); *Kulko v. Superior Court*, 436 U.S. 84 (1978). However, there has been no final judgment concerning the third question presented by the petition, and therefore jurisdiction is lacking. 28 U.S.C. Section 1257(3). Although this issue was presented to the California Supreme Court, it was merely a request, as herein, for an advisory opinion, because petitioner has *not* made a general appearance in this case. Thus, both statutory and constitutional jurisdiction are lacking as to this question. See generally, *Hammon v. Southwestern Gas Pipeline*, 721 F.2d 140, 143-44 (5th Cir. 1983).

STATEMENT OF THE CASE

Real Party in Interest, while accepting petitioners' Statement of the Case, respectfully sets forth the following inaccuracies:

1. Petitioner states that "Supporting declarations established without contradiction that John Holman & Sons . . . did not know that any of the insured vessels were owned by a California corporation or had a California home port or even sailed in California waters, and did not intend to cause any effect in California. (App. A18-A32)." *Petition* at 6.

However, the declaration of H. Robert Larkin was also before the Superior Court (as well as the California Court of Appeal and Supreme Court). In his declaration, Mr. Larkin stated, in part:

> The 'Ralston Purina Account' is a large, much sought after account by all insurance brokers and intermediaries. The cover notes and policies of insurance issued by the various brokers and insuring entities referred to the 'assured' as 'Ralston Purina Incorporated', but all insured vessels were then specifically listed on an 'underlying schedule'. . . . It is inconceivable that an experienced London insurance broker such as John Holman would not have known that the insured vessels were California tuna fishing vessels. The fleet premiums exceed $2,000,000.

App. B-4.[1]

Thus, supporting declarations *did* establish a question of fact concerning these critical issues. Indeed, the holding of the Superior Court lends itself to but one conclusion -- that this question of fact was resolved against petitioners. See App. A-10 ("Holman need not have intended to cause an effect in California by its placement of a layer of insurance on a California vessel. However, such act could reasonably have been expected by Holman to have an effect in California"). See also, Declaration of Joseph Madruga, App. B-7 — B-9 (California nexus).

2. To the extent that petitioners' statement regarding the Superior Court's collective reference to John Holman & Sons and Horace, Holman as "Holman", *Petition* at 7, tends to imply that they were considered as a single entity, the Superior Court's

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[1] To insure clarity, references to appendices supplemented by Real Party in Interest Lawton-Byrne-Bruner will be cited as App. B, while references to material provided by petitioner will be referred to as enumerated in the petition.

opinion itself indicates that the two entities were indeed regarded as separate. See App. A-7.

REASONS WHY THE WRIT SHOULD BE DENIED

1. *Neither the decision below nor the established facts raise the intitial question presented in the Petition.*

The first question presented in the petition is based on an unwarranted factual predicate -- *i.e.*, that John Holman & Sons "had no contact with California. . . ." Not only does this statement beg the question, it is inconsistent with the decision of the Superior Court. See *supra* at p. 3. Further, this issue was not squarely presented to the California Supreme Court. In Holman's state court petition, this question was framed as:

> Whether the Due Process Clause of the Fourteenth Amendment permits this state to exercise personal jurisdiction (a) over a foreign corporation *based solely upon a single foreseeable but unintended 'effect' in this state caused by a commercial transaction. . . .*

Petition for Review, Issues Presented for Review, at 1 [emphasis added] (App. B-15 — B-16).

Thus, the question, as framed below, focused on the issue of intent and seemingly conceded a foreseeable effect in California. The question focused on whether John Holman & Son's lack of intent to cause an effect in California deprived California of in personam jurisdiction. However, the facts and procedural history of this case simply do not permit the formulation of the first question presented by the petitioner. On its facts, this is a "foreseeable effects" case -- not a "no contacts" case.

2. *The Superior Court properly concluded, based on substantial evidence, that petitioner John Holman & Sons knowingly placed insurance covering California fishing vessels; that such an act could reasonably have been expected to have an effect in California; and that the exercise of in personam jurisdiction was proper.*

The clear determination underlying the Superior Court's holding, App. A-10, is that John Holman & Sons knew, at the time insurance was placed, that the insured vessels were San Diego tuna boats. This finding is supported by evidence that was properly before that court -- the declaration of H. Robert Larkin. (App. B-1 — B-6.) Indeed, the notion that a fleet of tuna boats could possibly be home-ported in St. Louis, Missouri, is quite remarkable. Thus, the determination that the placement of insurance "could reasonably have been expected by Holman to have an effect in California" was within the discretion of the Superior Court.

(a) *The facts of this case fall squarely within the accepted boundaries of in personam jurisdiction.*

This court has long recognized that a state may properly exercise in personam jurisdiction over a non-resident corporation that has purposefully directed its activities at residents of the forum, see *Burger King Corp. v. Rudzewicz*, __ U.S. __, 105 S.Ct. 2174, 2182 (1985); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. __, __, 104 S.Ct. 1473, 1478 (1984), when "the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King v. Rudzewicz, supra*, 105 S.Ct. at 2182; *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. __, __, 104 S.Ct. 1868, 1872 (1984).

This "purposeful availment" of the privilege of conducting activities in the forum state satisfies the "traditional notions of fair play and substantial justice" which underly the minimum contacts

benchmark for the exercise of in personam jurisdiction. See *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Such "purposeful availment" supports the exercise of jurisdiction even though it consists of a single act, *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957) (single act creating a "substantial connection" with forum), and physical contacts are entirely lacking. See *Burger King v. Rudzewicz, supra*, 105 S.Ct. at 2184; see also, *McGee v. International Life Insurance Co., supra*, 355 U.S. at 222-23.

The facts of this case fall squarely within the defined boundaries of in personam jurisdiction. This is not a case, such as *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), in which an out-of-state corporation's only tie to the forum resulted from a customer's unilateral decision to move its product there. Nor has John Holman & Sons been haled into a California court as a result of "random" "fortuitous", or "attenuated" contacts. See *World-Wide Volkswagen v. Woodson, supra*, 444 U.S. 299. Rather, John Holman & Son engaged in purposeful economic activity involving California tuna vessels from which it derived substantial interest in providing a forum for the litigation which arises from such contacts. See *McGee, supra*, 355 U.S. at 223; *Secrest Machine Corp. v. Superior Court*, 33 Cal.3d 664, 669 (1983); *Buckeye Boiler Corp. v. Superior Court*, 71 Cal.2d 893, 902 (1969).

The cases cited by petitioner do not rebut this conclusion. Although petitioner relies strongly on the district court's opinion in *Burmingham Fire Ins. Co. v. KOA Fire & Marine Ins. Co.*, 572 F.Supp. 962 (S.D.N.Y. 1983), this reliance is misplaced. The quoted portion of this opinion is dicta, because unlike the present case, the third party plaintiff in *Burmingham Fire Ins. v. KOA* failed to introduce *any* evidence in opposition to the third party defendant's motion to dismiss. See *Id.* at 965. ("KOA has utterly failed, however, to provide any evidentiary support to buttress [its] assertions"); see also *Id.* at 966 ("KOA has failed to furnish

any evidence to support its own allegations or to controvert [third party defendant's]. It has not presented any evidence showing what New York risks, if any, were involved here. . . .''). Here, competent evidence has been introduced which establishes Holman's contacts with California and contradicts assertions raised in petitioners' declarations.

Similarly, the argument that petitioners' status as a foreign corporation precludes the exercise of in personam jurisdiction in this case is unfounded. This is because restrictions on state sovereign power under the minimum contacts doctrine are grounded in the ''individual liberty interest preserved by the due process clause rather than as a 'function of federalism concerns'''. *Burger King v. Rudzewicz*, __ U.S. __, __, 105 S.Ct. 2174, 2182, n. 13. See also *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03, n. 10 (1982). Although the foreign status of the corporate defendant may be relevant, among other factors, to a determination of the reasonability of the exercise of state court jurisdiction, the due process clause has never been construed to affirmatively bar state courts from exerting jurisdiction over foreign corporations with significant forum contacts. As this Court recently stated, ''Where a defendant who purposefully directed his activities at forum residents seeks to defeat jurisdiction, it must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'' *Burger King v. Rudzewicz, supra*, 105 S.Ct. at 2185. Under the facts of this case, petitioners' foreign status presents much less than a compelling case, especially considering California's interests in providing a forum for this litigation. See, *Data Disc, Inc. v. Systems Technology Asso., Inc.*, 557 F.2d 1280, 1289 (9th Cir. 19__).

This analysis also holds true with regard to Horace, Holman Ltd. Through its purchase of an undisclosed percentage of the assets of John Holman & Sons, Horace, Holman & Co. became

the direct beneficiary of John Holman & Son's forum-related activities.[2]

Thus, given the vaguely contradicted allegation that Horace, Holman was a successor in interest to John Holman & Sons, the Superior Court acted within the bounds of its discretion in treating Horace, Holman as such.

California's special regulatory interest in insurance, and the California nexus of this litigation supports the exercise of California jurisdiction in this case. See, *e.g.*, *Quattrone v. Superior Court*, 44 Cal.App.3d 296, 306-08 (1975) (State interest in subject regulatory concern). When an entity such as John Holman & Sons places a major layer of insurance for a San Diego based fleet of tuna boats, it is reasonably foreseeable that, should problems develop, the negligent broker would be haled into a San Diego court. This case involves a result which is entirely foreseeable from the negligent placement of insurance -- a gap in coverage caused by an insolvent foreign insurer. Its effects were held most strongly in San Diego, which is also entirely foreseeable, because the insurance was intended to cover San Diego fishing boats. The effects are precisely of the type which one would reasonably expect, and they arose precisely where one would reasonably expect to find them. Under these circumstances, California's assertion of in personam jurisdiction is both reasonable and constitutionally proper.

---

[2] Because real parties' discovery efforts have been thwarted, see App. B-17 — B-21, facts concerning the extent of the purchase are limited. In the affidavit filed by Horace, Holman, its managing director simply stated, among other things, that, "To the best of [his] knowledge, John Holman & Sons is still in existence," and proferred the legal conclusion that Horace, Holman was not the successor in interest of John Holman & Sons, but rather the purchaser of "the goodwill aspect" of its London broker's business. (App. A-16.)

3. *Petitioner improperly seeks an advisory opinion on the continuing validity of the California Supreme Court's decision in McCorkle v. City of Los Angeles.*[3] *Further, California's appellate procedure is constitutionally sound, and does not require review by this Court.*

While California courts avoid the issuance of advisory opinions as a matter of discretion, see *Younger v. Superior Court of Sacramento County*, 21 Cal.3d 102, 119-20 (1978), this Court must avoid such decisions because subject matter jurisdiction is lacking. See *supra* at p. 7. Petitioner essentially claims that the interlocutory review procedure provided by California Code of Civil Procedure Section 418.10 is inadequate because of the *McCorkle* doctrine, ignoring the common law concept that a general appearance represents a party's consent to personal jurisdiction. The requirement that petitioners elect between denying or consenting to jurisdiction simply does not deprive them of either life, liberty, or property.

Further, because California's treatment of a general appearance as a consent to personal jurisdiction is steeped in common law tradition, the appellate review provided by Section 418.10 is not a "capricious or arbitrary" denial of review. Rather, this procedure is sound, representing the clear intent of the California legislature. Indeed, it is well-settled law that there is no constitutional right to an appeal; "the appellate procedure is entirely statutory and subject to complete legislative control." *Trede v. Superior Court*, 21 Cal.2d 630 (1943); see also *Skaff v. Small Claims Court*, 68 Cal.2d 76 (1968).

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[3] 70 Cal.2d 252 (1969).

CONCLUSION

For the foregoing reasons, real party in interest respectfully submits that the Petition for Writ of Certiorari should be denied.

Dated: December 10, 1985

Respectfully submitted,

AULT, MIDLAM & DEUPREY

By: _____
KEVIN W. MIDLAM

Attorneys for Real Party in Interest,
LAWTON-BYRNE-BRUNER
INSURANCE AGENCY
COMPANY

APPENDICES

LAW OFFICES
AULT, MIDLAM and DEUPREY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
5030 Camino de la Siesta, Suite 201
San Diego, California 92108
(619) 295-1202

Attorneys for LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DONALD J. CORREIA and CHERYL MARIE CORREIA, Plaintiffs, v. CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al., Defendants. AND ALL RELATED CROSS-ACTIONS.	Case No. 526828 DECLARATION OF H. ROBERT LARKIN IN SUPPORT OF OPPOSITION TO CROSS-DEFENDANTS' MOTION TO QUASH SERVICE OF SUMMONS Date: March 7, 1985 Time: 9:00 a.m. Dept: 35

I, H. Robert Larkin, do hereby declare a follows:

I am an officer and director of LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY, a Missouri Corporation,

which is a defendant and a cross-complainant in the above-entitled litigation.

For a number of years, LAWTON-BRYNE-BRUNER had assisted a number of tuna fishing vessel owners in obtaining insurance for their vessels, to include protection and indemnity insurance. This group of owners was known collectively as the "Ralston Purina account". The M/V Conquest was one of the vessels covered by the insurance which LAWTON-BRYNE-BRUNER had procured.

Effective December 1, 1980, as had been its custom, LAWTON-BRYNE-BRUNER again procured insurance for the Ralston Purina fleet, to include the M/V Conquest. This insurance again included protection and indemnity insurance, which is designed to protect the owner of the vessel in the event that one of the vessel's crew members becomes injured and brings suit. The purpose of the insurance is, of course, to insure that the injured seaman has insurance protection so that he might be conpensated [*sic*] for his injuries.

In the policy of insurance which became effective on December 1, 1980, LAWTON-BRYNE-BRUNER placed 30% of the first $500,000 in protection and indemnity insurance directly with an entity known as Marine Office of America Corporation. The underwriter on this policy of insurance was CONTINENTAL INSURANCE COMPANY.

The remaining 70% of the first $500,000 together with all excess layers of insurance, was placed by LAWTON-BRYNE-BRUNER through a Canadian insuring intermediary known as CANADIAN INTERNATIONAL MARINE UNDERWRITERS (CIMU).

LAWTON-BRYNE-BRUNER was advised subsequently by CIMU that insurance had been placed as follows:

a) 70% of the first $100,000 was placed with an italian insurer known as SIAT.

b) 70% of the next layer of insurance ($200,000 excessive of $100,000) was placed by CIMU with an entity known as AMERICAN CENTENNIAL INSURANCE COMPANY.

CIMU then advised LAWTON-BRYNE-BRUNER that it (CIMU) had to go to the London marine market to place all remaining insurance and that it did so by going to the entity known as JOHN HOLMAN & COMPANY. CIMU reported that JOHN HOLMAN placed all remaining insurance as follows:

a) 70% of the third layer of insurance ($200,000 excess of $300,000) through JOHN HOLMAN with a "London underwriter". LAWTON-BRYNE-BRUNER was subsequently advised that the insuring entity was "BEDFORD INSURANCE COMPANY LIMITED". A true and correct copy of the JOHN HOLMAN cover note attesting to this insurance is attached to this declaration as Exhibit "A".

b) The first excess layer of insurance ($500,000 excess of $500,000) was also placed through JOHN HOLMAN, again reportedly through a "London underwriter". LAWTON-BRYNE-BRUNER was ultimately advised that the name of this insuring entity was REINSURANCES LIMITED. A copy of the cover note which we ultimately received attesting to this placement is attached to this declaration as Exhibit "B". (LAWTON-BRYNE-BRUNER ultimately learned that this layer of insurance had been in turn reinsured through DUNCANSON & HOLT, a New York corporation with offices in California.)

c) The second and third excess layers ($500,000 excess of $1,000,000 and 3.5 million dollars excess of 1.5 million dollars) were placed with LLOYD'S syndicates.

The "Ralston Purina account" is a large, much sought after account by all insurance brokers and intermediaries. The cover notes and policies of insurance issued by the various brokers and insuring entities referred to the "assured" as "Ralston Purina Incorporated", but all insured vessels were then specifically listed on an "underlying schedule". (In this case, there were thirty-four vessels on the schedule). It is inconceivable that an experienced London insurance broker such as JOHN HOLMAN would not have known that the insured vessels were California tuna fishing vessels. The fleet premiums exceed $2,000,000.

It should be noted that LAWTON-BRYNE-BRUNER and the insureds were originally notified, and the JOHN HOLMAN cover note confirms, that the layer of insurance of $200,000 excess of $300,000 had been placed with a "London underwriter". There is in fact a Bedford General Insurance Company, Limited, which is a licensed London insurer. (It is a subsidiary of the Zurick insurance company). At no time did JOHN HOLMAN advise LAWTON-BRYNE-BRUNER or anyone else that the actual insuring entity on this layer of insurance was the BEDFORD INSURANCE COMPANY LIMITED (Hong Kong).

LAWTON-BRYNE-BRUNER has subsequently learned that JOHN HOLMAN actually placed this layer of insurance with the BEDFORD through the BEDFORD'S London managing agent, GERALD HERBERT LIMITED. It is inconceivable that JOHN HOLMAN & COMPANY was not aware that GERALD HERBERT of GERALD HERBERT LIMITED was in fact one of five directors of the BEDFORD INSURANCE COMPANY LIMITED.

LAWTON-BRYNE-BRUNER has also subsequently learned that JOHN HOLMAN & COMPANY participated in the placement of reinsurance for the first excess layer of insurance ($500,000 excess of $500,000). This layer of insurance, which had been placed with REINSURANCES LIMITED, a Cayman Island insurer, which was also not licensed in London, was reinsured

through DUNCANSON & HOLT'S San Francisco office. True and correct copies of telexes which were subsequently provided to us by CIMU, attesting to communications to CIMU from JOHN HOLMAN & COMPANY, are attached hereto as Exhibits C-1 and C-2.

In May, 1981, LAWTON-BRYNE-BRUNER learned of the incident involving the injury to DONALD CORREIA while on board the M/V Conquest, one of the insured vessels. LAWTON-BRYNE-BRUNER immediately placed MOAC and CIMU on notice. Thereafter, processing of the claim brought by the CORREIAS passed to CIMU as intermediary for the lead insurer with respect to the claim.

In September, 1983, counsel for the plaintiffs made a demand at a settlement conference in excess of $500,000. Out of an abundance of caution, LAWTON-BYRNE-BRUNER suggested that CIMU place all excess layers on notice. CIMU acknowledged that it had done so. It is my opinion, based upon my decades of training and experience in the insurance industry, that, had the CORREIA claim been properly processed in the first instance, the insuring intermediaries would have placed the appropriate insuring entities on notice of the claim and reserves would have been set aside appropriately. This obviously never occurred.

In late November, 1983, LAWTON-BRYNE-BRUNER was advised, for the first time, that the layer of insurance of 70% of $200,000 excess of $300,000 had not been placed with a "London underwriter" but, rather, had been placed with a Hong Kong insurer. LAWTON-BRYNE-BRUNER was advised that the Hong Kong insurer had just been dealt a legal set back in the British courts when its own reinsurance contracts with a Brazilian insurer were found to hav been illegal (since the BEDFORD was not a licensed insurer in London) and that the contracts were thus voided by the English courts.

LAWTON-BRYNE-BRUNER then retained counsel in London to advise it of this situation. Among other things, LAWTON-BRYNE-BRUNER directed its counsel, the firm of solicitors of Hill, Dickinson & Company, to contact London counsel for CIMU and JOHN HOLMAN. Our counsel advised LAWTON-BRYNE-BRUNER in a telex dated February 3, 1984, that HOLMAN'S counsel had advised that HOLMAN had no communications from the BEDFORD INSURANCE COMPANY. (A true and correct copy of an excerpt of a telex sent by HOLMAN'S counsel to LAWTON-BRYNE-BRUNER'S counsel is attached as Exhibit "D").

On February 29, 1984, LAWTON-BRYNE-BRUNER'S counsel advised that HOLMAN'S counsel advised that the BEDFORD was simply denying any knowledge of the CORREIA claim. A true and correct copy of a telex sent by HOLMAN'S counsel to LAWTON-BRYNE-BRUNER'S counsel is attached hereto as Exhibit "E".

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of March, 1985, at San Diego, California.

H. ROBERT LARKIN

LAW OFFICES
AULT, MIDLAM and DEUPREY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
5030 Camino de la Siesta, Suite 201
San Diego, California 92108
(619) 295-1202

FILED
Robert D. Zumwalt, Co. Clk.
APR 2 1985
BY: C. LEWIS

Attorneys for LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DONALD J. CORREIA and CHERYL MARIE CORREIA, Plaintiffs, v. CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al., Defendants. AND ALL RELATED CROSS-ACTIONS.	Case No. 526828 DECLARATION OF JOSEPH MADRUGA IN SUPPORT OF MOTION FOR RECONSIDERATION Date: April 19, 1985 Time: 9:00 a.m. Dept: 35

I, Joseph Madruga, declare as follows:

I am a resident of the County of San Diego, State of California. I am a citizen of the State of California.

In April, 1981, I was an officer and a director in the Conquest Fishing Corporation, a California corporation. Conquest Fishing Corporation was the owner of the tuna fishing vessel known as the M/V Conquest. The Conquest was the vessel on which DONALD J. CORREIA was working when he was injured in April, 1981.

At that time, the M/V Conquest used San Diego as a home port.

For a number of years, the Conquest Fishing Corporation had obtained protection and indemnity insurance for the M/V Conquest. We obtained this insurance through our managing corporation, known as the Sea M. Corporation, which was also a California corporation. As a principal in the vessel's owner, I generally negotiated for the insurance to be provided for the M/V Conquest by dealing with personnel from LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY, either in St. Louis or here in California.

The policy of insurance on the Conquest which was in force at the time of DONALD J. CORREIA'S accident had been obtained by contact with LAWTON-BRYNE-BRUNER personnel. At the time, I was in California. The bill for the premiums was sent by LAWTON-BRYNE-BRUNER in St. Louis to Sea M. Corporation in California. Attached hereto as Exhibit "A" is a true and correct copy of a letter which I received dated January 26, 1981, in which the invoice for the premiums on the subject vessel was forwarded from LAWTON-BRYNE-BRUNER to Sea M. Corporation.

The premiums for this insurance were in turn mailed by Sea M. Corporation, in California, to LAWTON-BRYNE-BRUNER in St. Louis. The semi-annual premiums for *only* protection and indemnity insurance for *only* the Conquest for $34,341. Attached hereto as Exhibit "B" is a true and correct copy of the invoice sent by LAWTON-BRYNE-BRUNER for this insurance.

Ultimately, a copy of the policy of insurance was sent to Sea M. Corporation in California. A copy of that policy was sent to me in California. A true and correct copy of the cover letter forwarding that policy to me is attached hereto as Exhibit "C".

A true and correct copy of the policy sent to me is attached to the complaint filed by DONALD J. CORREIA. Among other things, in that policy, was a document entitled the "New York Suable Clause". A true and correct copy of that document from that policy is attached hereto as Exhibit "D".

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 20 of March, 1985, at San Diego, California.

Joseph Madruga

JOSEPH MADRUGA

January 26, 1981

Mr. Hal Scott
Sea M Corporation
2040 Harbor Island Drive
Suite 101
San Diego, California 92101

Re: CONQUEST, FRONTIER, MONTANA,
SARATOGA - P&I Renewal

Dear Hal:

Enclosed you will find the semi-annual P&I invoices due on the above referenced vessels. These represent the Primary and Excess layers as stated on the invoice.

I would appreciate your reviewing the total amount of P&I to ensure that the total limit insured to date is adequate for your needs.

If you should have any questions or comments, feel free to contact me.

Best regards.

Very truly yours,

Robert G. Lawrence
Vice President

RGL/dlb
Enc.
cc: Joseph Madruga

EXHIBIT "A" TO MADRUGA DECLARATION

Lawton-Byrne-Bruner
Insurance Since 1889
Ten Broadway, Saint Louis, Missouri 63102
314-621-5540

REFERENCE NO. 318924-1

Vessel "CONQUEST"

CONTACT NAME	ACCOUNT NO.	DATE
318	8558	12/1/80

ALL PREMIUMS ARE DUE AND PAYABLE ON EFFECTIVE DATE OF COVERAGE.

IF FINANCING IS DESIRED PLEASE CONTACT OUR OFFICE IMMEDIATELY.

EFFECTIVE DATE	EXPIRATION DATE	POLICY NUMBER	COMPANY	DESCRIPTION	PREMIUM
12/1/80	12/1/81	LR12180	Continental/ CIMU	$500,000 Primary P&I	$27,336.50
"	"	LR121801/ 802	CIMU	$3,500,000 Excess P & I	7,004.50
				TOTAL SEMI - ANNUAL PREMIUM DUE 12/1/80 - 6/1/81	$34,341.00

TO INSURE PROPER CREDIT TO YOUR ACCOUNT PLEASE RETURN THE YELLOW REMITTANCE COPY WITH YOUR CHECK IN THE ENCLOSED ENVELOPE. $34,341.00

EXHIBIT "B" TO MADRUGA DECLARATION

Lawton-Byrne-Bruner
Insurance Since 1889

April 16, 1981

Mr. Hal Scott
Sea M Corporation
2040 Harbor Island Drive
Suite 101
San Diego, California 92101

Re: Protection & Indemnity
Renewal Policies

Dear Hal:

Enclosed you will find a copy of all the P&I policies, both Primary and Excess for the period December 1, 1980 to December 1, 1981.

Please review and advise if you have any questions or comments.

Best regards.

Very truly yours,

/s/
Robert G. Lawrence
Vice President

RGL/dlb
Enc.
cc: Joseph Madruga

EXHIBIT "C" TO MADRUGA DECLARATION

NEW YORK SUABLE CLAUSE

The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless, as between the Assured and the Assurers the place of suit hereon shall be deemed the State of New York, United States of America, and any suit hereon may be brought against the Underwriters in any Court of competent jurisdiction within the United States of America. The summons and other legal processes may be served on Underwriters by and on behalf of the Assured by mailing a copy thereof by United States Registered mail addressed to Louis Orgelfinger, Daniel E. Costi or Martin J. Dever the law firm of Messrs. Mendes & Mount, 3 Park Avenue, New York, New York 10016, each of whom Underwriters hereby authorize to accept by and on their behalf such summons and other legal processes against Underwriters in any Court of competent jurisdiction within the United States of America. The mailing as herein provided, of such summons or other legal process shall be deemed personal service and accepted by Underwriters as such, and shall be legal and binding upon Underwriters for all the purpose of the suit. Final judgment against Underwriters in any such suit shall be conclusive; and it may be enforced in other jurisdictions including Great Britian, [*sic*] by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purposes of suit as herein provided, the word "Assured" includes any Mortgagee under ship mortgage and any person succeeding to the rights of any such Mortgagee.

If this insurance is affected by the New York State Insurance Law;

> Underwriters hereon hereby designate the Superintendent of Insurance of the State of New York or his successor in office their true and lawful attorney upon whom may be served any lawful

process in any action, suit, or proceeding institute by or on behalf of the (re)insured, or any beneficiary hereunder arising out of this contract of (re)insurance.

To be attached to and forming part of Policy No. L.R. 12180.

MAR/POL/3

4th Civil No. D003476

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY LTD.,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIONAL MARINE UNDERWRITERS LTD. and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

PETITION FOR REVIEW

ISSUES PRESENTED FOR REVIEW

This case presents the following important issues for review:

1. Whether the Due Process Clause of the Fourteenth Amendment permits this state to exercise personal jurisdiction (a) over a foreign corporation based solely upon a single foreseeable but

unintended "effect" in this state caused by a commercial transaction in connection with which the foreign resident, acting at the request of another foreign citizen performed services entirely within its own country; or, (b) over a foreign corporation which, subsequent to the above-referenced transactin, merely purchased a portion of the assets of the first corporation?

2. Whether the Due Process and Equal Protection Clauses of the Fourteenth Amendment require this state to grant plenary non-discretionary review of a trial court's denial of a motion to quash service of process when such motion is predicated on federal constitutional grounds?

LAW OFFICES
AULT, MIDLAM and DEUPREY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
5030 Camino de la Siesta, Suite 201
San Diego, California 92108
(619) 295-1202

MAY -1 1985
By M. MASES DEPUTY

Attorneys for LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DONALD J. CORREIA, et al., Plaintiffs, v. CANADIAN INTERNATIONAL MARINE UNDERWRITERS LIMITED, et al., Defendants. AND ALL RELATED CROSS-ACTIONS.	Case No. 526828 DECLARATION OF JAMES GORMAN IN SUPPORT OF EX PARTE APPLICATION FOR ORDER FOR CONTINUANCE OF HEARING Date: March 7, 1985 Time: 9:00 a.m. Dept: 35

I, James Gorman, declare as follows:

I am an attorney at law duly licensed to practice law in the State of California. I am a member of the law firm of Ault, Midlam & Deuprey, attorneys of record for defendant and cross-complainant LAWTON-BRYNE-BRUNER INSURANCE AGENCY COMPANY.

This declaration is in support of an ex parte application for a continuance of a hearing which is currently set for March 7, 1985, at 9:00 a.m. in Department 35. Said motion has been brought by defendants and cross-defendants JOHN HOLMAN & SONS, LIMITED and HORACE, HOLMAN & CO. LIMITED. The motion is to quash service of the summons for lack of jurisdiction, or in the alternative, to dismiss for inconvenient forum.

The chronology of events relevant to this motion could be set forth as follows:

a) On November 16, 1984, I caused the summons and cross-complaint with respect to this matter to be sent to JOHN HOLMAN & SONS LIMITED and HORACE, HOLMAN & COMPANY LIMITED in first class mail, postage prepaid, requiring a return receipt. Pursuant to California Code of Civil Procedure Section 415.45, service of the summons was deemed effective ten days after that mailing.

b) On November 29, 1984, I had a lengthy telephone conversation with attorney Marshall Morgan, a member of the law firm representing the cross-defendants in this action. Mr. Morgan indicated in that telephone call that his law firm would be appearing on behalf of JOHN HOLMAN & SONS LIMITED and HORACE, HOLMAN & COMPANY LIMITED.

c) On November 30, 1984, I mailed various materials to Mr. Morgan pertaining to this matter.

d) On December 4, 1984, I had another lengthy telephone call with Mr. Morgan concerning this case.

e) On December 20, 1984, at a meeting in the offices of Morgan, Wenzel & McNicholas, Mr. Morgan indicated for the first time to me that his client might want to challenge jurisdiction. Mr. Morgan indicated, however, that his client

needed additional time to evaluate the facts and circumstances of this case. I therefore gave Mr. Morgan through and including January 31, 1985, to file papers challenging jurisdiction, if that was his clients' choice. If his clients chose to make an appearance in this matter without challenging jurisdiction, Mr. Morgan was given through and including February 28, 1985 to respond.

f) On January 30, 1985, I learned for the first time that cross-defendants were going to challenge jurisdiction. On January 31, 1985, pursuant to an ex parte application filed by counsel for the cross-defendants, a hearing date of March 7, 1985, was set in this matter.

g) I received a copy of the moving papers with respect to this matter on February 5, 1985.

Upon receipt and review of the moving papers filed by the cross-complainants, I prepared a request for inspection and reproduction of records from JOHN HOLMAN & SONS LIMITED. Said request was forwarded in the mail to the law firm of Morgan, Wenzel & McNicholas on February 7, 1985. On that same date, I called attorney Marshall Morgan advising him of this action on my part and indicating that I would need to obtain the results of that discovery before the hearing on the motion to quash service. I suggested to Mr. Morgan that we stipulate to continue the hearing on the motion to quash. Mr. Morgan referred me to attorney Nelson. On the following day, I spoke with attorney Nelson, who indicated that she would not be able to stipulate to a continuance of the hearing.

On February 27, 1985, I received written objections to our request to produce documents from attorney Nelson. Counsel objected to our request to produce documents on various grounds, to include but not to be limited to the purported requirements of the Hague Convention, alleged improper service, overbreadth, and alleged unspecified impropriety.

I am now requesting a continuance of the hearing currently set for March 7, 1985, for a period of at least 90 days in order to conduct discovery on issues relevant to the subject matter of the motion to quash jurisdiction. It is well established in the area of motions to quash service of summons for lack of personal jurisdiction that a plaintiff is entitled to conduct discovery on jurisdictional issues. *Omega Video v. Superior Court*, 146 Cal.App.3d 470, 481, 194 Cal.Rptr. 574 (1983).

At this time, it is our intention to pursue the request to produce documents previously forwarded to counsel for JOHN HOLMAN & SONS LIMITED. Furthermore, it is our intention to propound appropriate depositions, to include the depositions of those declarants who have filed declarations on behalf of JOHN HOLMAN & SON LIMITED and HORACE HOLMAN & COMPANY LIMITED in this matter.

On February 27, 1985, the following persons were notified by myself or by my secretary, Carla Jacobs, that the instant ex parte application for a continuance of the hearing would be made and that said application would be made on Thursday, February 28, 1985, at 3:30 p.m. in Department 35. The persons contacted and the time of said contact on February 27 were as follows:

a) Gretchen Nelson was advised in person at 12:55 p.m.

b) The secretary for Andre Jardini, counsel of record for Canadian International Marine Underwriters Limited, was contacted at 2:20 p.m.

c) The secretary for John Rhoades, counsel of record for defendant SIAT, was contacted at 2:21 p.m.

d) The secretary for attorney Bonnie Bass, counsel of record for American Continental Insurance Company, was contacted at 2:37 p.m.

e) The secretary for attorney Janet Grove, counsel of record for Duncanson & Holt, was contacted at 2:25 p.m.

f) The secretary for Daniel MacLeod, counsel of record for Lloyd's, was contacted at 2:26 p.m.

g) The secretary for John Reed, attorney for the plaintiffs, was so contacted at 2:25 p.m.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of February, 1985 at San Diego, California.

James Gorman

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013a and 2015.5)

Attorney:
AULT, MIDLAM & DEUPREY
KEVIN MIDLAM
JAMES GORMAN
5030 Camino de la Siesta,
Suite 201
San Diego, CA 92108
(619) 295-1202

(Attorneys for Real Party in Interest, Lawton-Byrne-Bruner Insurance Agency Company)

October Term, 1985
No. 85-802

JOHN HOLMAN & SONS LTD., and HORACE, HOLMAN & COMPANY, LTD.,
Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,
Respondent,

I, the undersigned, say: I am a citizen of the United States, over 18 years of age, employed in the County of San Diego, California, in which county the within-mentioned mailing occurred, and not a party to the subject cause; that I am employed at 5030 Camino de la Siesta, Suite 201, San Diego, County of San Diego, State of California.

I served the within REAL PARTY'S BRIEF IN OPPOSITION: an original and 39 copies on the United States Supreme Court as follows:

Alexander L. Stevens
Clerk, U.S. Supreme Court
Washington, D.C. 20543

of which 3 true and correct copies of the document filed in the cause is affixed, by placing 3 copies thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

MORGAN, WENZEL & McNICHOLAS
W. MARSHALL MORGAN
WALTER M. YOKA
GRETCHEN M. NELSON
1545 Wilshire Blvd., Suite 800
Los Angeles, CA 90017

GREINES, MARTIN, STEIN & RICHLAND
ALAN G. MARTIN
9601 Wilshire Blvd., Suite 508
Beverly Hills, CA 90210

KNAPP, PETERSON & CLARKE
ANDRE E. JARDINI
70 Universal City Plaza, Ste. 400
Universal City, CA 91608

Solicitor General
Department of Justice
Washington, D.C. 20530

Clerk of the Court
California Supreme Court
3580 Wilshire Blvd., Room 213
Los Angeles, CA 90010

REED & REED
JOHN W. REED
7610 Girard Ave., Suite 200
La Jolla, CA 92037

Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at San Diego, California, on the 10th day of December, 1985.

There is a delivery service by United States Mail at each

place so addressed or regular communication by United States mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California December 10, 1985.

Dotty Michael

Dotty Michael

Subscribed and sworn to before me this 10th day of December, 1985.

Barbara L. Cox

Notary Public in and for said County and State

OFFICIAL SEAL
BARBARA L. COX
NOTARY PUBLIC - CALIFORNIA
Principal Office, San Diego County
My Commission Expires May 4, 1986

(seal)

Supreme Court, U.S.
FILED
DEC 21 1985
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 85-802

In the Supreme Court of the United States

October Term, 1985

JOHN HOLMAN & SONS, LTD., and HORACE, HOLMAN & COMPANY LTD.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIONAL MARINE UNDERWRITERS LTD. and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

MORGAN, WENZEL & MCNICHOLAS
W. MARSHALL MORGAN
WALTER M. YOKA
GRETCHEN M. NELSON
1545 Wilshire Boulevard
Suite 800
Los Angeles, California 90017
Telephone: (213) 483-1961

GREINES, MARTIN, STEIN & RICHLAND
ALAN G. MARTIN
9601 Wilshire Boulevard
Suite 508
Beverly Hills, California 90210
Telephone: (213) 859-7811

Attorneys for Petitioners
JOHN HOLMAN & SONS LTD. and
HORACE, HOLMAN & COMPANY LTD.

Westside Law Publishers Los Angeles, California (213) 477-0491

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No. 85-802

In the Supreme Court of the United States

October Term, 1985

JOHN HOLMAN & SONS, LTD., and HORACE, HOLMAN & COMPANY LTD.,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO,

Respondent,

DONALD J. CORREIA and CHERYL M. CORREIA, LAWTON-BYRNE-BRUNER INSURANCE AGENCY COMPANY, CANADIAN INTERNATIONAL MARINE UNDERWRITERS LTD. and CANADIAN MARINE UNDERWRITERS LTD.,

Real Parties in Interest.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

INTRODUCTION

Shortly after the instant Petition for Writ of Certiorari was filed, the Court granted review in *Connolly v. Burt*, No. 85-298 (ruling below, *Burt v. Board of Regents of University of Nebraska*, 757 F.2d 242 (10th Cir. 1985).

In this Supplemental Brief we compare and contrast the facts of the instant case with those in *Burt*, demonstrating that this is a similar but even more compelling case for review.

LEGAL DISCUSSION

In *Burt*, the plaintiff physician sued the Board of Regents of the University of Nebraska and the University's Chairman of the Department of Orthopedic Surgery, Dr. Connolly, under whom plaintiff had done an orthopedic residency. The suit was brought in Colorado seeking damages for alleged defamation, etc. based upon an uncomplimentary letter Dr. Connolly had written about the plaintiff in response to inquiries made when plaintiff applied for medical staff privileges at several Colorado hospitals. Dr. Connolly established that he was a Nebraska resident, did no business in Colorado, owned no property there and was never physically present in connection with plaintiff's claim. The district court dismissed for lack of personal jurisdiction. The Court of Appeals reversed, with Judge Seth dissenting.

There are many important similarities between *Burt* and this case; the dissimilarities only further underscore the importance of review here.[1] The long-arm statutes of both Colorado and California extend to the full limit of the Due Process Clause. See *Behagen v. Amateur Basketball Association of America*, 744, F.2d 731, 733 (10th Cir. 1983), cert. denied 105 S.Ct. 1879 (1985) [Colorado law]; *Kulko v. Superior Court*, 19 Cal.3d 514,

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[1]Although *Burt* involves a case with First Amendment overtones, this Court has recently explained that there is no special jurisdictional jurisprudence for cases involving the First Amendment. *Calder v. Jones*, ___ U.S. ___, 104 S.Ct. 1482, 1487-1488 (1984).

521 (1977), rev'd, 436 U.S. 84 (1978). In either jurisdiction, when in personam jurisdiction is challenged the plaintiff has the burden of showing the basis for jurisdiction. See *Burt v. Board of Regents of Univerisity of Nebraska, supra,* 757 F.2d 242, 247 (Seth, J. dissenting.) [Colorado Law]; *University Financing Consultants, Inc. v. Barouche,* 148 Cal.App.3d 1165, 1168 (1983).

In *Burt* and the instant case, jurisdiction rests upon a single act. In each the party over whom long-arm jurisdiction is asserted was sought out at his place of residence and solicited to do something which became the act causing an "effect" upon which liability is asserted in a foreign jurisdiction. The major difference between the cases on this point is that Dr. Connolly was directly contacted by the Colorado hospitals and responded directly to them, i.e., he at least had actual knowledge that his letter was a "contact" with Colorado. In contrast, John Holman & Sons Ltd. was contacted by a Canadian corporation regarding insurance on a Missouri corporation's tuna fleet. John Holman had no contact with the forum state. Since John Holman's acts were all in London, there was nothing in its conduct equivalent to the letter in *Burt;* to the contrary, the excess insurance policy which was issued by the carriers contacted by John Holman expressly states "the place of physical and actual issue and delivery of this policy is the City of London." If anything, John Holman is more nearly analogous to the Nebraska mailman who picked up Dr. Connolly's letter and started it on its way to Colorado.

There is no real analogy for Horace, Holman & Company Ltd., except possibly if one imagines that in *Burt* Colorado also asserted jurisdiction over a person with a name similar to Dr. Connolly's because he was

also a doctor and had bought some medical instruments from Dr. Connolly.[2]

In each case jurisdiction is asserted on the basis of an extraordinary application of an "effects" test which cannot be reconciled with the forty-year development of minimum contacts doctrine.[3] The instant case, however, involves a much more extreme notion of actionable "effects." The whole point of the letter of reference in *Burt* was to cause an "effect" in Colorado.

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[2]In a brief in opposition to the petition, Lawton-Byrne-Bruner Insurance Agency Company ("LBB") directly embraces this fantastic jurisdictional premise stating: "Through its purchase of an undisclosed percentage of the assets of John Holman & Sons, Horace, Holman & Co. became the direct beneficiary of John Holman & Sons's forum-related activities." (Opposition, pp. 7-8, fn. omitted.)

The dubious logic reflected in this proposition is mirrored in LBB's wan assertion that the trial court could treat Horace, Holman as "a successor in interest to John Holman & Sons" because this unsupported description was only "vaguely contradicted". First, since LBB had the burden of establishing the factual basis for California jurisdiction and did not, it would be irrelevant even if the asserted basis were only vaguely, contradicted. Second, the continuing existence of John Holman was repeatedly established in a direct and unequivocal manner, for example, by the affidavit of its present chairman and managing director. (E.g. App. A19) Third, we are at a loss to understand what it means to be "a" successor in interest unless this is simply a veiled way of describing a purchaser of some assets. Finally, LBB's characterization is unaccompanied by the requisite constitutional analysis. It is, after all, still supposed to be true that "[e]ach defendant's contacts with the forum State must be assessed individually." *Calder v. Jones, supra*, 104 S.Ct. at 1487.

[3]In its opposition to the petition LBB makes the same error as that for which the dissent chided the majority in *Burt*, namely that this Court has adopted an "effects" test of jurisdiction independent of minimum contacts (see Opposition, p. 4 ["this is a 'foreseeable effects' case—not a 'no contacts' case"].) "Effects" has not yet swallowed "contacts."

John Holman, however, had no actual knowledge that its conduct in London had any California connection, although it may have been foreseeable that a tuna boat might wind up in California litigation, just as it is foreseeable that a doctor may require a letter of reference anywhere. In *Burt* any "effect" was a direct and intended consequence of the letter. In the instant case, any effect in California was fortuitous, remote and unintended.

Even assuming that some vague "effect" was somehow foreseeable, " 'foreseeability' alone has *never* been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 295 (1980), emphasis added. Indeed in *Calder v. Jones, supra,* 104 S.Ct. 1482, 1487, the Court stressed "[t]he mere fact that [defendants] can 'foresee' that the article will be circulated and have an effect in California is not sufficient for an assertion of jurisdiction." The conduct alleged in *Burt* was of an intentionally tortious nature. Here, the gravamen of the charge against John Holman is that it negligently placed insurance in the London market; it did nothing aimed at California. In no intellectually honest sense can it be said that it purposely availed itself of California law, nor that it could reasonably anticipate being haled around the globe to justify its conduct in London as a London broker, when it had been engaged in London by a Canadian corporation regarding insurance for a Missouri corporation.

Nebraska is, of course, much closer to Colorado than London is to Southern California, yet arguably the hardship of defending a case at a distance does not increase directly with mileage. However, the fact that this case involves the exercise of jurisdiction over English corporate citizens sought out and acting in their

homeland raises considerations of fairness and prudence in the realm of international relations which have no parallel in *Burt*.

> "If other nations believe that American policy unfairly disadvantages their citizens or that it proceeds from fiat rather than principle, they are apt to resist enforcement efforts and perhaps to retaliate with countermeasures of their own." Note, *Predictability and Comity: Toward Common Principles of Extraterritorial Jurisdiction*, 98 Harv. L. Rev. 1310, 1321 (1985) (fns. omitted); see, e.g., *Pacific Atlantic Trading Co. v. M/V Main Exp.*, 758 F.2d 1325, 1330 (9th Cir. 1985).

Although perhaps merely an incident of its procedural history, it is also worth noting that the assertion of jurisdiction in *Burt*, though possibly no more constitutionally permissible than in this case, was at least accorded plenary appellate review. The final word on this crucial issue was not that of a state trial court nor the discretionary denial of review with the non sequitur "no abuse of discretion is shown."[4]

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[4]LBB is greatly mistaken in its view of this Court's jurisdiction with respect to the third issue framed by the petition. (See Opposition, pp. 2, 9.) Petitioners are between the very Scylla and Charybdis described in *General Council on Finance and Administration v. Superior Court*, 439 U.S. 1355 (1978). (Rehnquist, J., in chambers.) There Justice Rehnquist observed that if California procedural law is as asserted by Petitioners—a point implicitly conceded by LBB—"I am convinced that this Court would find the Superior Court's judgment to be 'final' within the meaning of § 1257." 439 U.S. at 1371-1372. There can be no reasonable doubt of the accuracy of this view. See, e.g., *Shaffer v. Heitner*, 433 U.S. 186 (1977); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

CONCLUSION

Minimum contacts and traditional notions of fair play and substantial justice have not been and cannot legitimately be replaced with some shapeless new jurisdictional "foreseeable effects" standard. There is no constitutional basis for California's exercise of personal jurisdiction over Petitioners, or either of them.

We respectfully pray that the Petition for Writ of Certiorari will be granted.

Respectfully submitted,

MORGAN, WENZEL & MCNICHOLAS
GREINES, MARTIN, STEIN & RICHLAND
ALAN G. MARTIN

Attorneys for Petitioners
JOHN HOLMAN and SONS LTD.
and HORACE. HOLMAN & COMPANY LTD.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on December 19, 1985, I served the within *Supplemental Brief in Support of Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(Original and forty copies)

California Supreme Court
3580 Wilshire Boulevard
Room 213
Los Angeles, California 90010

San Diego Superior Court
220 West Broadway
San Diego, California 92101

Andre E. Jardini, Esq.
Knapp, Peterson & Clarke
70 Universal City Plaza
Suite 400
Universal City, California 91608

James Gorman, Esq.
Ault, Midlam & Deuprey
5030 Camino de la Siesta
Suite 201
San Diego, California 92108

John W. Reed, Esq.
Reed & Reed
7610 Girard Avenue
Suite 200
La Jolla, California 92037

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 19, 1985, at Los Angeles, California.

Joy Rivelli Miller
(Original signed)